रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05

REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 39] नई दिल्ली, सितम्बर 23—सितम्बर 29, 2012, शनिवार/आश्विन 1—आश्विन 7, 1934
No. 39] NEW DELHI, SEPTEMBER 23—SEPTEMBER 29, 2012, SATURDAY/ASVINA 1—ASVINA 7, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 सितम्बर, 2012

का. आ. 2970.—केंद्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए असम राज्य सरकार राजनीतिक (ए) विभाग, दिसपुर के दिनांक 8 अगस्त, 2012 की अधिसूचना सं. पीएलए. 658/2011/221 द्वारा प्राप्त सहमति से वर्ष 2007–2008 से लेकर 2009–2010 की अवधि के दौरान एनसी हिल्स (अब दीमा हसाओ जिला) असम में कृषि और उद्यान-विज्ञान मिशन में राशि का अवैध दुरुपयोग, आहरण और हस्तांतरण के संबंध में, पुलिस स्टेशन सीआईडी में पंजीकृत भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13(2) के साथ पठित धारा 13(2)(सी) व (डी) के साथ पठित भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी, 409 और 420 के अधीन सीआईडीपी. एस. मामला सं. 38/2011 के संबंध में तथा प्रयासों, दुष्प्रेरणा, षडयंत्रों के संबंध में अथवा उपर्युक्त उल्लिखित अपराधों के संबंध में और इन तथ्यों से उत्पन्न या इसी संव्यवसार में किए गए अन्य कोई अपराध या अपराधों के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों का क्षेत्राधिकार का विस्तार सम्पूर्ण असम राज्य के संबंध में करती है।

[फां. सं. 228/47/2012-ए.वी.डी. II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi the 17th September, 2012

S.O. 2970.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Assam, Political (A) Department, Dispur vide Notification No. PLA. 658/2011/221 dated 8th August, 2012, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Assam for investigation of offences relating to CID P.S. Case No. 38/2011 under Sections 120-B, 409 and 420 of the Indian Penal Code, 1860 (Act No. 45 of 1860) read with Section 13(1)(c) & (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (Act No. 49 of 1988) registered at Police Station CID regarding illegal transfer, withdrawal and

misappropriation of fund in the Agriculture and Horticulture Mission in NC Hills (now Dima Hasao District), Assam during the period from 2007-2008 to 2009-2010 and attempt, abetment and conspiracy in relation to or in connection with the above mentioned offences and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F.No. 228/47/2012-AVD-II]

RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 24 सितम्बर, 2012

का. आ. 2971.—बीमा विनियामक और विकास प्राधिकरण अधिनियम, 1999 (1999 का 41) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री एस. बी. माथुर, पूर्व अध्यक्ष, एलआईसी को सुश्री ईला आर. भट्ट के स्थान पर तत्काल प्रभाव से पांच वर्षों की अवधि के लिए अथवा अगले आदेश होने तक, जो भी पहले हो, बीमा विनियामक और विकास प्राधिकरण के अंश-कालिक सदस्य के रूप में नियुक्त करती है।

[फा.सं. 11/6/2003-बीमा-III]

प्रिया कुमार, निदेशक

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 24th September, 2012

S.O. 2971.—In exercise of the powers conferred by Section 4 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), the Central Government hereby appoints Shri S.B. Mathur, Ex-Chairman, LIC as Part-time Member of the Insurance Regulatory and Development Authority vice Ms. Ela R. Bhatt with immediate effect for a period of five years or until further orders whichever is earlier.

[F.No. 11/6/2003-Ins. III]

PRIYA KUMAR, Director

मानव संसाधन विकास मंत्रालय

(स्कूल शिक्षा और साक्षरता विभाग)

(एनएलएम-IV अनुभाग)

नई दिल्ली, 17 सितम्बर 2012

का. आ. 2972.—भारत सरकार की अधिसूचना सं. एफ. 46-3/2008/एई-4/एनएलएम-4 दिनांक 07-07-2010 के द्वारा गठित राष्ट्रीय साक्षरता मिशन प्राधिकरण (एनएलएमए) की परिषद् की अवधि 31-3-2013 तक बढ़ाई जाती है।

[सं. एफ. 46-3/2008-एई-4/एनएलएम-4]

जगमोहन सिंह राजू, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of School Education and Literacy)

(NLM-IV SECTION)

New Delhi, the 17th September, 2012

S.O. 2972.—The term of the Council of the National Literacy Mission Authority (NLMA), constituted vide Government of India's Notification No. F. 46-3/2008/AE-4/NLM-4 dated 07-07-2010, is extended till 31-03-2013.

[No. F. 46-3/2008-AE-4/NLM-4]

JAGMOHAN SINGH RAJU, Jt. Secy.

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली 17 सितम्बर, 2012

का. आ. 2973.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, मानव संसाधन विकास मंत्रालय (उच्चतर शिक्षा विभाग) के अंतर्गत, निम्नलिखित विश्वविद्यालयों/संस्थानों को ऐसे कार्यालयों के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:

1. पंजाब केंद्रीय विश्वविद्यालय, बठिण्डा, पंजाब
2. भारतीय प्रौद्योगिकी संस्थान, रोपड़, रूपनगर, पंजाब

[सं. 11011-1/2011-रा.भा.ए.]

अनन्त कुमार सिंह, संयुक्त सचिव

(Department of Higher Education)

(O.L. Unit)

New Delhi, the 17th September, 2012

S.O. 2973.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following Universities/Institutes under the Ministry of Human Resource Development, (Deptt. of Higher Education) as offices, whose more than 80% members of the staff have acquired working knowledge of Hindi:

1. Central University of Punjab, Bhatinda.
2. Indian Institute of Technology Ropar, Rupnagar, Punjab.

[No. 11011-1/2011-O.L.V.]

ANANT KUMAR SINGH, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 31 अगस्त, 2012

का. आ. 2974.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह वे स्थापित हो गया है

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	2	3	4
1.	आई एस 9835 (भाग 3): 2012 पॉवर सिस्टम के सीरिज कैपेसिटर्स भाग 3 आंतरिक फ्यूज	–	31.08.12

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़ ,चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 29/टी-31]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 31st August, 2012

S.O. 2974.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards to the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:

SCHEDULE

Sl. No.	No. and Year of the Indian Standard	No. and Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establish-ment
(1)	(2)	(3)	(4)
1.	IS 9853 (Part 3) : 2012 Series Capacitors for Power Systems Part 3 Internal Fuses	—	31-08-12

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : ET 29/T-31]

R.C. MATHEW, Scientist 'F' and Head/ (Electro-technical)

नई दिल्ली, 4 सितम्बर, 2012

का. आ. 2975.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक(को) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम सं.	संशोधित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
1	2	3	4
1.	आईएस 14665 (भाग 4/अनुभाग 1) : 2001	2, अगस्त 2012	31 अगस्त, 2012
2.	आईएस 14665 (भाग 4/अनुभाग 2) : 2001	1, अगस्त 2012	31 अगस्त, 2012
3.	आईएस 14665 (भाग 4/अनुभाग 3) : 2001	4, अगस्त 2012	31 अगस्त, 2012
4.	आईएस 14665 (भाग 4/अनुभाग 6) : 2001	5, अगस्त 2012	31 अगस्त, 2012

(1)	(2)	(3)	(4)
5.	आईएस 14665 (भाग 4/अनुभाग 7) : 2001	1, अगस्त 2012	31 अगस्त, 2012
6.	आईएस 14665 (भाग 4/अनुभाग 9) : 2001	2, अगस्त 2012	31 अगस्त, 2012

इस भारतीय संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 25/टी-27]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 4th September, 2012

S.O. 2975.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :—

SCHEDULE

Sl. No.	No.&Year of the Indian Standards	No.& year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 14665 (Part 4/Sec 1) : 2001 Electric Traction Lifts : Part 4 components Section 1 Lifts Buffers	2 August, 2012	31 August, 12
2.	IS 14665 (Part 4/Sec 2) : 2001 Electric Traction Lifts : Part 4 Components Section 2 Lift Guide rails and Guide shoes	1 August, 2012	31 August, 12
3.	IS 14665 (Part 4/Sec 3) : 2001 Electric Traction Lifts : Part 4 Components Section 3 Lift car Frame, Car, conterweight and suspension	4 August, 2012	31 August, 12
4.	IS 14665 (Part 4/Sec 6) : 2001 Electric Traction Lifts Part 4 Components Section 6 Lift Doors, Lucking Devices And contacts	5 August, 12	31 August, 12
5.	IS 14665 (Part 4/Sec 7) : 2001 Electric Traction Lifts Part 4 components Section 7 Lift Machines and Brakes	1 August, 2012	31 August, 12
6.	IS 14665 (Part 4/Sec 9) : 2001 Electric Traction Lifts Part 4 components Section 9 Controller and Operating Devices	2 Augst, 2012	31 August, 12

Copies of this Amendment are available with the Bureau of Indian Standards, Manak Bhawan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : ET/25/T-27]

R.C.MATHEW, Scientist 'F' and Head/ (Electro- technical)

नई दिल्ली, 7 सितम्बर, 2012

का. आ. 2976.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है, वे स्थापित हो गए हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आई एस ओ 19011:2011 संपरीक्षण प्रबंध पद्धतियों की मार्गदर्शिका (पहला पुनरीक्षण)		30 जून, 2012

इन मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलूरू भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमएसडी/जी-8 अधिसूचना]

निर्मल कुमार पाल, वैज्ञानिक 'एफ' एवं प्रमुख (प्रबन्ध एवं तंत्र विभाग)

(New Delhi, the 7th September, 2012

S.O. 2976.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the

Indian Standards, particulars of which are given in the schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl. No.	No.& Year of the Indian Standard Established	No.& Year of Indian Standard, if any, Superseded by the New Indian Standard	Date Established or Date of Establish-ment
(1)	(2)	(3)	(4)
1.	IS/ISO 19011:2011 Guidelines for auditing manage-ment systems *(First Revision)*	—	30, June 2012

Copies of the above Standards are available for sale with the Bureau of Indian Standards, Manak Bhawan, 9, Bahadur Shah Zafar Marg,New Delhi-110 002 and Regional Offices at Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangaluru, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: MSD/G-8 Notification]
NIRMAL KUMAR PAL, Scientist 'F' & Head
(Management & Systems Department)

नई दिल्ली, 7 सितम्बर, 2012

का. आ. 2977.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गए हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 7920 (Part 2): 2012/आई एस ओ 3534-2:2006 सांख्यिकी शब्दावली और प्रतीक भाग 2 व्यावहारिक सांख्यिकी (तीसरा -पुनरीक्षण)	—	31 अगस्त, 2012
2.	आई एस 15202 (Part 2): 2012/आई एस ओ 11462-2:2010 सांख्यिकी प्रक्रिया नियंत्रण (एसपीसी) को कार्यान्वित करने हेतु मार्गदर्शी सिद्धांत भाग 2 तरीकों और तकनीकों की सूची	-	31 अगस्त, 2012

इन मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलुरू, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमएसडी/जी - 8 अधिसूचना]

निर्मल कुमार पाल, वैज्ञानिक 'एफ' एवं प्रमुख
(प्रबन्ध एवं तंत्र विभाग)

New Delhi, the 7th September, 2012

S.O. 2977.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl. No.	No.& Year of the Indian Standard Established	No.& Year of Indian Standard, if any, Superseded by the New Indian Standard	Date Established or Date of Establsih-ment
(1)	(2)	(3)	(4)
1	IS 7920 (Part 2): 2012/ISO 3534-2: 2006 Statistics Vocabulary and symbols—Part 2 Applied Statistics (Third Revision)	—	31 August, 2012
2.	IS 15202 (Part 2): 2012/ISO 11462-2: 2010 Guidelines for implementation of statistical process control (SPC Part 2: Catalogue of tools and techniques		31 August, 2012

Copies of the above Standards are available for sale with the Bureau of Indian Standards, Manak Bhawan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and its Regional Offices at Kolkata, Chandigarh, Chennai,

Mumbai and also Branch Offices at Ahmedabad, Bangaluru, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: MSD/G-8 Notification]

NIRMAL KUMAR PAL, Scientist 'F' & Head
(Management & Systems Department)

नई दिल्ली, 7 सितम्बर, 2012

का. आ. 2978.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिस भारतीय मानकों का विवरण नीचे अनुसूची में दिया गया है वे स्थापित हो गए हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 14873: 2012/ आई एस ओ 2709:2008 सूचना एवं प्रलेखन - सूचना विनियम के लिए फार्मेट (पहला पुनरीक्षण)	-	31 अगस्त, 2012
2.	आई एस 15993: 2012/ आई एस ओ 20775:2009 सूचना एवं प्रलेखन - होल्डिंग सूचना के लिए स्कीमा	-	31 अगस्त , 2012
3.	आई एस 15995: 2012/ आई एस ओ 25577: 2008 सूचना एवं प्रलेखन - मार्क एक्सचेंज	-	31 अगस्त , 2012
4.	आई एस 15996: 2012/ आई एस ओ 11620:2008 सूचना एवं प्रलेखन - पुस्तकालय कार्यकारिता संकेतक	-	31 अगस्त, 2012
5.	आई एस 15994 (Part 1): 2012/आई एस ओ 23081. 1:2006 सूचना एवं प्रलेखन - रिकार्ड प्रबंधन प्रक्रियाएं - रिकार्ड के लिए मेटाडाटा - भाग 1: सिद्धांत	-	31 अगस्त, 2012
6.	आई एस 15991: 2012/ आई एस ओ 8459:2009 सूचना एवं प्रलेखन - डाटा एक्सचेंज एवं इन्क्वायरी में प्रयोग के लिए ग्रंथसूचिका डाटा एलीमेंट डायरेक्ट्री	-	31 अगस्त, 2012
7.	आई एस 15992: 2012/ आई एस ओ 15836:2009 - सूचना एवं प्रलेखन - द ढब्लीन कोर मेटाडाटा एलीमेंट सेट	-	31 अगस्त, 2012
8.	आई एस 15994 (Part 2): & 2012/आई एस ओ 23081-2:2009 सूचना एवं प्रलेखन - रिकार्ड प्रबंधन प्रक्रियाएं - रिकार्ड के लिए मेटाडाटा - भाग 2 : अवधारणा एवं कार्यान्वयन संबंधी मुद्दे	-	31 अगस्त, 2012
9.	आई एस 16500: 2012 - देवनागरी लिपि तथा हिंदी - वर्तनी	-	31 अगस्त, 2012

इन मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलुरू, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : एमएसडी/जी-8 अधिसूचना]

निर्मल कुमार पाल, वैज्ञानिक 'एफ' एवं प्रमुख
(प्रबन्ध एवं तंत्र विभाग)

New Delhi, the 7th September, 2012

S.O. 2978.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been established on the date indicated against each:

SCHEDULE

Sl. No.	No.& Year of the Indian Standard Established	No.& Year of the Indian standard, if any, Superseded by the New Indian Standard	Date of Establi-shed or Date of establish-ment
(1)	(2)	(3)	(4)
1.	IS 14873:2012/ISO 2709:2008 Information and documentation - Format for information exchange (First Revision)	-	31 August, 2012
2.	IS 15993:2012/ISO 20775:2009 Information and documentation - Schema for holdings information	-	31 August, 2012
3.	IS 15995:2012/ISO 25577:2008 Information and documentation Marc exchange	-	31 August, 2012
4.	IS 15996:2012/ISO 11620:2008 Information and documentation - Library performance indicators	-	31 August, 2012
5.	IS 15994 (Part 1): 2012/ISO 23081-1:2006 Information and documentation - Records management processes-Metadata for records-Part 1: Principles	-	31 August, 2012
6.	IS 15991:2012/ISO 8459:2009 Information and documentation -- Bibliographic data element directory for use in data exchange and enquiry	-	31 August, 2012
7.	IS 15992:2012/ISO 15836:2009 Information and documentation -- The Dublin Core metadata element set	-	31 August, 2012
8.	IS 15994 (Part 2):2012/ ISO 23081-2:2009 Information and documentation -- Records management processes -- Metadata for records-- Part 2: Conceptual and implementation issues	-	31 August, 2012
9.	IS 16500:2012 Devnagri Script and Hindi Spellings	–	31 August, 2012

Copies of the above Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and its Regional Offices at Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangaluru, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: MSD/G-8 Notification]

NIRMAL KUMAR PAL, Scientist 'F' & Head
(Management & Systems Department)

नई दिल्ली, 7 सितम्बर, 2012

का. आ. 2979.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों का विवरण नीचे अनुसूची में दिए गए मानक (को) में संशोधन किया गया/किये गये है:

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
1	(2)	(3)	(4)
1.	आई एस 3196 (भाग 1): 2006 अल्प दाब द्रवणीय गैसों के लिये 5 लिटर से अधिक जल क्षमता वाले वेल्डिड अल्प कार्बन इस्पात के सिलिंडर भाग 1 द्रवित पैट्रोलियम गैस (एल पी जी) के लिये सिलिंडर की विशिष्ट	संशोधन नं. 5 जुलाई 2012	तुरंत

इस संशोधन की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को http://www.standardsbis.in द्वारा इंटरनैट पर खरीदा जा सकता है।

[संदर्भ : एम. ई. डी./जी - 2:1]

टी. वी. सिंह, वैज्ञानिक 'एफ' एवं प्रमुख (एम.ई.)

New Delhi, the 7th September, 2012

S.O. 2979.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No.& Year of the Indian Standard	No.& Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 3196 (PART 1): 2006 Welded Low Carbon Steel Cylinders Exceeding 5 Litre Water Capacity for Low Pressure Liquefiable Gases, Part 1 Cylinders for Liquefied petroleum gases (LPG) - Specification (Fifth Revision)	Amendment No. 5 July 2012	with immediate effect

Copies of the Amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian Standard can be made at : http://www.standardsbis.in.

[Ref: MED/G-2:1]

T.V. SINGH, Scientist 'F' & Head (M.E.)

नई दिल्ली, 11 सितम्बर, 2012

का. आ. 2980.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15188:2012/ आई एस ओ 8199:2005 पानी की गुणता - संवर्धन द्वारा सूक्ष्मजीवों की गणना हेतु सामान्य मार्गदर्शन (पहला पुनरीक्षण)	आई एस 15188: 2002	31 अगस्त, 2012
2.	आई एस 15989:2012/ आई एस ओ 17604:2003 खाद्य एवं पशु आहार सामग्री की सूक्ष्मजैविकी - सूक्ष्मजैविक विश्लेषण हेतु पशु शव के नमूने लेना		31 अगस्त, 2012
3.	आई एस 15990:2012/ आई एस ओ 6887-2:2003 खाद्य एवं पशु आहार सामग्री की सूक्ष्मजैविकी - सूक्ष्मजैविकीय परीक्षण हेतु टेस्ट नमूने, प्रारंभिक सस्पेंशन एवं डेसीमल डाइल्यूशन तैयार करना - मांस एवं मांस उत्पादों को तैयार करने के लिए विशिष्ट नियम		31 अगस्त, 2012

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चेन्नई, मुम्बई, चण्डीगढ़ तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एफएडी/जी - 128]

डॉ० आर० के० बजाज, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

New Delhi, the 11th September, 2012

S.O. 2980.—In pursuance of clause (b) of sub-rule (1) of Rule (7) of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No.& Year of the Indian Standard Established	No.& Year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establi-shed
(1)	(2)	(3)	(4)
1	IS 15188:2012/ISO 8199: 2005 Water quality —General guidance on the enumeration of micro-organisms by culture (First Revision)	IS 15188:2002	31 August, 2012
2.	IS 15989:2012/ISO 17604: 2003 Microbiology of food and animal feeding stuffs — Carcass sampling for microbiological analysis		31 August, 2012
3.	IS 15990:2012/ISO 6887-2: 2003 Microbiology of food and animal feeding stuffs — Preparation of test samples, initial suspension and decimal dilutions for microbiological examination — Specific rules for the preparation of meat and meat products		31 August, 2012

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: FAD/G-128]

Dr. R.K. BAJAJ, Scientist 'F' & Head (Food & Agri.)

नई दिल्ली, 14 सितम्बर, 2012

का. आ. 2981.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं:

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 903:1993	संशोधन संख्या 3, जून, 2012	05 सितम्बर, 2012
2.	आई एस 2878:2004	संशोधन संख्या 8, जून, 2012	05 सितम्बर, 2012

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110 002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सी ई डी/राजपत्र]

डी॰ के॰ अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 14th September, 2012

S.O. 2981.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No.& Year of the Indian Standards	No.& Year of of the amendment	Date from which the amend-ment shall have effect
(1)	(2)	(3)	(4)
1	IS 903:1993	Amendment No. 3, June, 2012	05 September, 2012
2	IS 2878:2004	Amendment No. 8, June, 2012	05 September, 2012

Copies of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur

Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: CED/Gazette]

D. K. AGRAWAL, Scientist 'F' & Head (Civil Engg.)

नई दिल्ली, 19 सितम्बर, 2012

का. आ. 2982.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई एस 11388:2012 अन्तर्ग्राही कचरा रैक के डिजाइन की सिफारिशें (दूसरा पुनरीक्षण)	आई.एस. 11388:1995	31 अगस्त, 2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को http://www.standardsbis.in पर इंटरनेट द्वारा खरीदा जा सकता है।

[संदर्भ: डब्ल्यू आर डी 14/T-28]

जे॰ सी॰ अरोड़ा, वैज्ञानिक 'एफ' एवं प्रमुख (जल संसाधन विभाग)

New Delhi, the 19th September, 2012

S.O. 2982.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

Sl. No.	No., Tiltle & Year of the Indian Standards Established	No.& Year of the Indian standards, if any, Superseded by the New Indian Standard	Date of Establish-ment
(1)	(2)	(3)	(4)
1	IS 11388:2012 Recommendations for design of trashracks for intakes (Second Revision)	IS 11388: 1995	31-08-12

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. Indian Standards can be purchased from BIS sales portal http://www.standardsbis.in.

[Ref: WRD14/T-28]

J.C. ARORA, Scientist 'F' & Head (Water Resources Deptt.)

कोयला मंत्रालय

आदेश

नई दिल्ली, 20 सितम्बर, 2012

का. आ.2983.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र, भाग-II, खंड 3, उपखंड (ii), तारीख 3 सितम्बर, 2011 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 2351, तारीख 29 अगस्त, 2011 पर उक्त अधिसूचना के प्रकाशन पर उससे संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् उक्त सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिनका केन्द्रीय सरकार इस निम्मित अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अत: अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है, कि उक्त भूमि में या उस पर इस प्रकार निहित सभी अधिकार तारीख 3 सितम्बर, 2011 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात-

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

2. उक्त सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएँगे और इसी तरह निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपीलें आदि जैसी सभी विधिक कार्यवाहियों की बाबत् उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएँगे;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों को, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उसपर के पूर्वोक्त अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

4. सरकार कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

5. सरकार कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा.सं. 43015/15/2008-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 20th September, 2012

S.O. 2983.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O. 2351 dated the 29th August, 2011, published in the Gazette of India, Part II, Section 3, sub-section (ii), dated the 3rd September, 2011 issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over such land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the said land and all rights in or over the such land so vested shall, with effect from the 3rd September, 2011, instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely:-

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

2. A Tribunal shall be constituted under Section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights in or over the said land, so vested, shall also be borne by the Government Company;

3. The Government Company shall indemnify the Central Government or its officals against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in or over the said land so vested;

4. The Governemnt Company shall have no power to transfer the said land and the rights to any other person without the prior approval of the Central Government; and

5. The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F.No, 43015/15/2008-PRIW-I]

A. K. DAS, Under Secy.

आदेश

नई दिल्ली, 20 सितम्बर, 2012

का. आ. 2984.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र भाग II खंड 3, उपखंड (ii), तारीख 5 मई, 2012 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का॰ आ॰ 1568 तारीख 30 अप्रैल, 2012 पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में या उस पर अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गये थे;

और केन्द्रीय सरकार का यह समाधान हो गया है कि ईस्टर्न कोलफील्ड्स लिमिटेड, सैक्टोरिया, डाकघर दिसेरगढ़, जिला वर्धवान (पश्चिम बंगाल) (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है) ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि और उस पर के सभी अधिकार, तारीख 30 अप्रैल, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त कंपनी में निहित हो जाएंगे, अर्थात्:

(1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज नुकसान और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार की प्रतिपूर्ति करेगी;

(2) सरकारी कंपनी द्वारा शर्त 1 के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त कंपनी द्वारा वहन किये जायेंगे और इसी तरह निहित उक्त भूमि में या उस पर के अधिकार के लिए या उसके संबंध में जैसे अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इसी प्रकार उक्त कंपनी द्वारा वहन किये जायेंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदाधिकारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदाधिकारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और भूमि में या उसके ऊपर इस प्रकार निहित अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों को, जो केन्द्रीय सरकार द्वारा जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं, पालन करेगी।

[फा. सं. 43015/29/2009-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

ORDER

New Delhi, the 20th September, 2012

S.O. 2984.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal number S.O.1568 dated the 30th April, 2012, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 5th May, 2012, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) have been vested absolutely in the Central Government free from all encumbrances under sub-section (i) of Section 10 of the said Act ;

And whereas, the Central Government is satisfied that the Eastern Coalfields Limited, Sanctoria, Post Office Dishergarh, District Burdwan (West Bengal) (hereinafter referred to as the Government company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the said land and rights in or over such land so vested shall, with effect from the 30th April, 2012, instead of continuing to so vest in the Central Government, shall vest in the Government company, subject to the following terms and conditions , namely :—

(1) The Government company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

(2) A Tribunal shall be constituted under Section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the Government company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said land, so vested, shall also be borne by the Government company;

(3) The Government company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;

(4) The Government company shall have no power to transfer the said land and rights to any other person without the prior approval of the Central Government; and

(5) The Government company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F. No. 43015/29/2009- PRIW-I]

A. K. DAS, Under Secy.

आदेश

नई दिल्ली, 21 सितम्बर, 2012

का. आ.2985.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी भारत के राजपत्र, भाग-II, खंड 3, उपखंड (ii), तारीख 29 अक्तूबर, 2011 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 3064, तारीख 19 अक्तूबर, 2011 पर उक्त अधिसूचना के प्रकाशन पर उससे संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) के सभी अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् उक्त सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जिनका केन्द्रीय सरकार इस निमित अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है, कि उक्त भूमि में या उस पर इस प्रकार निहित सभी अधिकार तारीख 29 अक्तूबर, 2011 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :—

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसी ही मदों की बाबत् किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी।

2. उक्त सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी तरह निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपीलें आदि जैसी सभी विधिक कार्यवाहियों की बाबत् उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे।

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के पूर्वोक्त अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो।

4. सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि के किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

5. सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/21/2008-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

ORDER

New Delhi, the 21st September, 2012

S.O. 2985.—Whereas on the notification of the Government of India in the Ministry of Coal, number S.O. 3064, dated the 19th October, 2011, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 29th October, 2011, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over such lands as described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby directs that the said lands and all rights in or over the said lands so vested shall, with effect from the 29th October, 2011, instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely :—

1. The Government Compay shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act.
2. A Tribunal shall be constituted under Section 14 of the said Act for the purpose of determining the amounts payable to the Central Government by the said Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights, in the said lands so vested, shall also be borne by the Government Company.
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in the said lands so vested.
4. The Government Company shall have no power to transfer the said lands to any other person without the prior approval of the Central Government; and
5. The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/21/2008 - PRIW-I]

A. K. DAS, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 22 अगस्त, 2012

का.आ. 2986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 80/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/19/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd August, 2012

S.O. 2986.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the Industiral Dispute between the employers in relation to the management of ANDHRA BANK and their workman, which was received by the Central Government on 7-08-2012.

[No. L-12012/19/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 3rd August, 2012

Present : A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 80/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Andhra Bank and their Workman]

Between

Sri S. Sivaguru	:	1st Party/Petitioner
Vs.		
The General Manager M/s. Andhra Bank, Zonal Office, 108, Linghi Chetty Street, Chennai-600001	:	2nd Party/Respondent

Appearance :

For the 1st Party/ Petitioner	:	Sri S. Vaidyanathan, Advocate
For the 2nd Party/ Management	:	Smt. Rita Chandrasekhar, Advocate

AWARD

The Central Government, Ministry of Labour and Employment *vide* its Order No. L-12012/19/2011-IR (B. II) dated 18-08-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Andhra Bank, Chennai in terminating the services of Sri S. Sivaguru, Ex-Clerk-cum-Typist is legal and justified? What relief the concerned workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 80/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The averments in the Claim Statement, bereft of unnecessary details, are as follows :

The petitioner, Sivaguru who had joined the service of the Respondent/Bank on 14-02-1983 as Clerk-cum-Typist while was working as Computer Operator with service of 27 years of unblemished service was terminated on 04-12-2009. The chronological list of dates enumerated in Para 3 of the Claim Statement would give a glance of the fact that the termination was erroneous on the pretext that he voluntarily ceased from employment in terms of the settlement dated 02-06-2005. He was on sanctioned leave till 30-06-2009 and was paid salary till that date. Even if it is assumed that he was on unauthorized leave from 01-07-2009 without waiting for the 90 days period to expire Bank sent letter dated 20-08-2009. He was sent three letters as in the tabular column under Para 9 in the name of "P". Sivaguru, a wrong identity due to which post office refused to hand over the same, he being "S". Sivaguru indicating want of proper service. For the allegation of misconduct against him there was no charge-sheet or enquiry. There is no compliance of Section 25F or Section 25G of the I.D. Act and amounts to retrenchment if not for misconduct rendering termination ab initio void. The three notices are with the contents as "you have been abstaining from duty from 18-04-2009 onwards without proper permission/ sanction of leave/competent authority, thereby causing dislocation of work with the duties allotted to you at Valsaravakkam Branch. Remaining absent from duty in the above said manner without permission or sanction of leave is a misconduct as per laid down rules. Clause 33 of the Bipartite Settlement is extracted in Para 7 of the Claim Statement. The Petitioner's correct name i.e. S. Sivaguru is mentioned only in termination letter dated 04-12-2009. Petitioner's attempts to join duty were foiled. He has not received the termina! benefits. He opted to be a Pension Optee in view of ongoing settlement signed shortly for

PF Optee to be Pension Optee. Termination order is illegal. No compensation or retrenchment compensation was paid. If there are any borrowings from outside it is only a minor misconduct even for which enquiry was not there and the punishment can be a minor stoppage of incement upto 6 months. There is no reason for the petitioner to voluntarily leave the employment when there is lot of loans to be repaid. Petitioner's request to extend the benefit of pension by letter dated 26-10-2010 as Second Pension Scheme introduced with retrospective effect to which he is eligible and made without prejudice to the ID pending. Divesting of his duties from 04-12-2009 is to be held illegal and he is to be reinstated with all benefits.

2. Counter Statement averments briefly read as follows:

Under Clause-33 of the 8th Bipartite Settlement dated 02-06-2005 an employee absenting himself from work for 90 days or more consecutive days without prior sanction of leave/extension of leave originally sanctioned or when there is satisfactory evidence that he has taken up employment in India or outside, the Management at any time thereafter may give him a notice at his last known address as recorded in the Bank calling upon him to report for work within 30 days of the date of the notice. In case the employee does not report for work within the said period or explain for his such absence within the said period satisfying the Management that he has not taken any other employment or avocation he will be given a further notice to report for work within 30 days of the said notice. In case he fails to report for duty he will be deemed to have voluntarily vacated his employment on expiry of the period of the said notice and final notice will be given once again advising him to report for work within 30 days of the notice and in the event of failure he will be deemed to have voluntarily vacated his employment and a communication would be sent to him to that effect by Regd. Post. He has been absenting himself from duty continuously w.e.f. 18-04-2009 without prior permission/ sanction of leave. That he worked upto 30-04-2009 is not true. He was served with first notice dated 20-08-2009 in terms of Clause 33 of the Bipartite settlement informing him that Management has reason to believe that he was not interested in the service of the Bank and also advising him to report for duty within 30 days of the said notice. Inadvertently his initial was mentioned as "P" instead of "S". But he refused to receive the notice when delivered by the Postman and the cover was returned. Second notice sent was also returned on refusal by him, a copy of which, was served on him on 14-10-2009. That he collected the same from the Post Office is not true. Still he did not report for duty. Third notice dated 28-10-2009 was received by him on 04-11-2009, but he did not report for duty. On expiry of the period of the third notice of 30 days, competent authority treated him as having voluntarily vacated his employment. Accordingly a communication was also sent to him on 04-12-2009 which was refused. His name was struck off from the rolls as per the provisions. Respondent is not aware of petitioner's ailment as claimed. Medical Reimbusement claim and sanction thereof do not absolve him from unauthorized absence. Even if on treatment, he having been discharged from hospital on 09-05-2009 he could have sought sanction of Medical Leave on medical certificate in which he failed. He was not on sanctioned leave as claimed and recovery of salary erroneously paid from 18-04-2009 to 30-06-2009 was advised. Notices were returned only because of refusal by petitioner to be received which is deemed service. Unauthorized absence being misconduct there is no question of issuing charge sheet or initiating any enquiry. There was no termination of the services. There is only deemed voluntary cessation of employment. There is no question of compliance of Section 25F & Section 25G of the I.D. Act. As per the undertaking of the petitioner and as authorized by him while availing various loans during his service the terminal benefits payable to him were appropriated towards the liability of the Bank outstanding in his name, in settlement of his terminal benefits. It is not a retrenchment or termination and therefore payment of compensation does not arise. Having not responded to the notice or reported for duty he cannot claim that there was no reason to leave the service of the Bank when lot of loans are to be repaid. He was not a Pension Optee at the crucial time of such treatment of having him voluntarily vacated his employment. At the time of introduction of the Pension Scheme in 1995, while he was in service he did not opt for Pension. So he is not entitled to pensionary benefits. At the time of second option for pension in 2010 he was not in service and he was not eligible to exercise second option for not fulfilling the conditions for extension of second option. Bipartite settlement provisions are having binding force.

3. Rejoinder averments in a nutshell are as follows:

Cardiologist diagnosed the petitioner as having heart attack (Triple Vessel Disease). Angiogram expenses come to Rs. 18,000 and that of medicine of Rs.13,194.32 totalling to Rs. 58,944.32 which was sanctioned. Repsondent's statement in Para-7 of the Counter statement that Respondent is not aware of the petitioner's ailment as claimed by him was made to this Court after sanctioning the medical reimbursement. Petitioner was paid salary upto 30.06.2009 which evidences leave sanction. It cannot be heard to say that salary upto 30-06-2009 was paid erroneously when Respondent claims that petitioner was remaining absent unauthorizedly since 18-04-2009. Respondent paid salary for the so-called unauthorized absence for April, May and June, 2009 and after issuing three notices of voluntary retirement for petitioner. Yet they did not inimate the petitioner about it. There is no communication to the petitioner about recovery of arrears paid till the date of dispute before the Conciliation Officer. Respondent unceremoniously sent out the employee who suffered heart attack after having served for more than two

decades. There were too many errors and the errors galore on the part of the Respondent making voluntary cessation also erroneous and unlawful. Petitioner is entitled to pension but for the illegal voluntary cessation of service. The attendant benefit of pension option also be part of the decision of the Court.

4. **Points for consideration are:**

(i) Whether terminating the services of Sri S. Sivaguru, Ex-clerk-cum-Typist is legal and justified?

(ii) To what relief the concerned workman is entitled?

5. Evidence consists of Ex. W1 to Ex. W23 on the petitioner's side marked on consent and Ex. M1 to Ex. M12 on the Respondent's side marked on consent with no oral evidence on either side.

Points (i) and (i)

6. Heard both sides. Perused the records and documents and written arguments on behalf of the Respondent. Both sides argued in terms of their case in the pleadings referring to documents and relied on the different rulings of the Apex Court and High Courts. The learned counsel for the petitioner emphasized in his argument that this is a case where the Management should have conducted enquiry against the workman before taking action against him. The discrepancy in the surname of the petitioner S. Sivaguru as P. Sivaguru, the first one being the correct one, in Ex. W1-Letter sent to him was being refused to be delivered by the Postman and the petitoner himself was collecting the same later directly from the Post Office. Though the petitioner had sent a letter expressing his readiness to report for duty, the Management was just disallowing the same saying that the termination was already brought about. The absence of the petitioner from duty on genuine medical grounds does not and cannot amount to abandonment of service where there ought to be intention to avoid the service, which is not there. The leave availed by the petitioner stands sanctioned and wages thereof remained paid. His medical reimbursement claim was also sanctioned. Because of the heart disease angiogram was conducted on him. Though bypass surgery was suggested, to avoid which, petitioner switched over to treatment under the system of homeopathy medicine. Though he was a PF Optee he exercised option for pension sanctioned with effect from a later date but retrospectively. His application was well within time as is proved from Ex. W14 signifying his PF Option to be read as Pension Option. If on the cut-off date, though petitioner is not in service due to superannuation, the settlement scheme providing pension being retrospective he is entitled to pension for which he has to return the PF money received with interest or appropriately be adjusted.

7. Ex-M6-Endorsement as unclaimed letter shows the petitioner to have aware of the notice. Petitioner did not report for work. Hence the Bank has no alternative other than to effect voluntary cessation of his service. Ex. W5-Letter of the petitioner purporting to date 30-12-2009 without any proof of despatch of the same by the petitioner and not received by the bank is only apt to be a fabricated letter. Petitioner did not show any interest to report for duty. There is no question of invoking Section-25F or Section-25G of the I.D. Act. While he preferred reimbursement claim, he did not apply for leave or permission or produced medical certificate. The instant case is not one of termination of the petitioner's service at the instance of the Respondent. ID is to be dismissed.

8. Contra arguments advanced on behalf of the Respondent are that the continuous absence of the petitioner without permission for 231 days ended in his discharge in terms of Shastri Award and Desai Award and Bipartite Settlements have binding force. There has been no response by the petitioner to the various notices issued by the Management and accordingly he was deemed to have voluntarily retired. While the reference is regarding termination of the services of the petitioner, what is attracted is voluntary cessation of service. Hence the validity of the reference is to be decided. The case of petitioner that he worked on 30-04-2009 is not with any proof. It is invoking Section-33 of Ex. M1-Bipartite Settlement that the voluntary cessation of employment in the case of the petitioner was made in passing the impugned order. Mere sanction of medical reimbursement to the petitioner cannot stengthen his case. The salary wrongly paid upto 30-06-2009 has been adjusted in his terminal benefits after having put on to his notice.

9. Reliance was placed on behalf of the petitioner in:

JAI SHANKAR VS. STATE OF RAJASTHAN (AIR-1966-SC-492) wherein it was held by the Supreme Court that "6.....A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no Opportunity is to go against Article-311 and this is what has happened here".

10. Reliance was placed on behalf of the Respondent in:

REGIONAL MANAGER, BANK OF BARODA VS. ANITHA NANDRA JOG (2009-9-SCC-462) wherein Supreme Court held "...Also, under Clause 17(b), when the management is reasonably satisfied that the employee has no intention of joining duty, it may call upon the employee to report for duty within 30 days failing which action could be taken under Clause 17(b). In the present case such a notice was given by the Bank on 26-06-1989 but the respondent wanted leave till April 1990 i.e. for another eight months. It is thus clear that she had no intention of resuming duty within 30 days. Hence, we are of the opinion that the action of the Bank in terminating her service on the

ground of voluntary cessation of employment vide order dated 25-08-1989, Annexure P-4 to this appeal, was valid"

— VIVEKA NAND SETHI VS. CHAIRMAN, J&K BANK LTD. AND OTHERS (2005-5-SCC-37) wherein Supreme Court held "E.....Compliance with principles of natural justice-Scope-Held, though principles of natural justice were required to be emplied with, a full-fledged departmental proceeding was not required to be initiated—A limited enquiry as to whether employee concerned had a sufficient explanation for his absence, would be enough".

11. Going by the rival contentions from either side and on scrutiny of relevant materials I am led to the conclusion that the termination of services of the petitioner is not legal and justified. It is true to say there is no real termination of service of the petitioner. It is only by invoking Clause-33 of the Bipartite Settlement that the petitioner has been deemed to have voluntary ceased from service by reason of his absence for more than 90 days without permission or sanction of leave from his employer. Petitioner's case as pleaded is that he did not receive the three notices sent by the Bank whereas according to the Respondent petitioner had been refusing to accept the notices for the reason of discrepancy in his surname as "P" instead of "S". But on this aspect the respective stand on either side does not stand substantiated. What the returned cover indicates from its endorsement on is that the article was unclaimed. But without any oral evidence to substantiate that the same was unclaimed it cannot be taken for granted that the same is the only truth. The case of the petitioner is that he has been on authorized leave till 30-06-2009, where after even if it is assumed that he was on unauthorized absence from 01-07-2009 the act of the Bank in sending letter dated 20-08-2009 without waiting for 90 days period to expire is illegal. On the countrary the case of the Management is that petitioner had been absenting from duty from 18-04-2009 onwards without permission/sanction of leave, and hence notice may well be in time, being after expiry of 90 days. But in the absence of any evidence let in by way of explanation it is not possible to know which version is correct. Evidently this is not a case attracting Section-25F or Section-25G of the ID Act. It is not a case of retrenchment or termination entitling payment of compensation. The petitioner has not responded to the notices or reported for duty. The case of the petitioner is that he was suffering from Heart Attack and there was already angiogram done at a cost or Rs. 18,000 which together with the value of medicines *viz.* Rs. 13,194,32 were got as medical reimbursement. Petitioner has had no case that he availed leave with permission or advance sanction of leave from competent authority with medical certificate. While the rule is against this conduct it is not explained by the petitioner why he has not chosen to stand by the rules. Admittedly, he applied for medical reimbursement which he got sanctioned and encashed. It is alien to comprehension, then why he should not have applied for leave or obtained permission to avail leave from the competent authority so as to make everything conform to the rules and established rules of legal procedure to the extent practicable. When Clause-33 of the Bipartite Settlement enables the Management to have recourse to treat the petitioner to be deemed to have voluntarily ceased from employment which is a self-working provision, no enquiry is contemplated. Even if in order to launch an enquiry and at attempt to serve notice on the petitioner, petitioner chooses to send them back on refusal how could an enquiry be held with the required efficacy requiring his presence? However, the rulings relied on either side categorically go to show that whatever be the regulation that enjoins in a case of punishment for extended leave an oportunity must be given to the absentee against whom an adverse order is proposed. What another decision referred to, says is that though a full-fledged enquiry is not required a limited enquiry as to whether the employee concerned had sufficient explanation for his absence would be enough and should be held. It is pertinent to note that pleading themselves do not constitute proof. Both parties have not come to the box to substantiate their case. This is a case is which an enquiry should have been conducted by the Management to allow the petitioner to explain his impugned conduct. That at that stage of enquiry he may not appear for the very purpose and would have reiterated his very same apparent past conduct of refusing to receive the notice cannot be lawfully and reasonably presumed. Discernibly it is a disputed espoused by the petitioner without lapse of much time after the cessation of his service. Though Clause-33 of the Bipartite Settlement stands on the edifice of deeming provision that is to say gain support from assumptions and presumptions they are not to be totally repudiated except when facts and circumstances so warrant. As far as possible a decision is to be rendered on proof of dispute of the very facts in controversy without banking on presumptions. In this context it is worthy to record the decision in RAJESH FRANCIS VS. PREETHI ROSLIN (2012-2-KLT-613) wherein it was held that "Any interpretation which should lead to the tyranny of a conclusive presumption contrary to proved facts will certainly have to be avoided and the other can be preferred. Courts must certainly prefer to come to just conclusions on the basis of facts rather than succum to conclusive legal presumptions of law. When the fact situation offers a legitimate option for the courts, we have no hesitation to agree that such a construction has to be followed which will cater to the ends of justice. We do also feel that the first concern of any court must certainly be to avoid injustice being done on the basis of a legal presumption when justice can be done on the

basis of fact. No court should consider itself a prisoner to the language of a statutory provision of precedents of a bygone era when interpretation consistent with the current legally congnizable inputs and realities can help the count to render justice to the satisfaction of the judicial conscience".

13. As laid down in the above when Courts must certainly prefer to come to just conclusions on the basis of facts rather than relying on presumptions of law, such a situation having not been brought about by either side by leading evidence though it is for the petitioner to fail for non-discharge of initial burden by him, still due to the fact that no enquiry has been held at all preceding the impugned order against the petitioner which goes against the principles of natural justice, I am to hold that the action of the Management terminating the service of the petitioner invoking the deemed Clause-33 of the Bipartite Settlement effecting voluntary cessation of service of the petitioner is not legal and justified. It is trite that an enquiry is dispensable only where the facts are admitted.

14. Therefore the termination of service of the petitioner is set aside and the petitioner is ordered to be reinstated into service forthwith with continuity of service and all other attendent benefits but without back wages.

15. The question regarding second option for pension being not a reffered issue is beyond the scope of the reference and is therefore left unanswered and is kept open.

16. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3rd August, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None
For the 2nd Party/Management : None

Documents Marked:
On the petitioner's side

Ex. No.	Date	Description
Ex. W1	20-08-2009	1st Notice sent by the Respondent Bank to the petitioner.
Ex. W2	25-09-2009	2nd Notice sent by the Respondent Bank to the petitioner.
Ex. W3	28-10-2009	3rd Notice sent by the Respondent Bank to the petitioner.
Ex. W4	04-12-2009	Termination Order issued by the Respondent Bank to the petitioner received by the pettioner on 13-01-2010 in the Branch.
Ex. W5	30-12-2009	Reply of the petitioner to the Respondent Bank.
Ex. W6	11-01-2010	Reply of the petitioner to the Respondent Bank through proper channel.
Ex. W7	11-01-2010	Telegram sent by the petittioner to the Respondent Bank (Zonal Office, Branch Office, Head Office), "stating illegal terminantion".
Ex. W8	12-01-2010	Telegram sent by the petittioner to the Respondent Bank (Head Office), "stating illegal terminantion".
Ex. W9	13-01-2010	Telegram sent by the petitioner to the Respondent Bank (Zonal Office, Branch Office,), "stating reporting for duty not allowed".
Ex. W10	18-01-2010	Telegram sent by the petittioner to the Respondent Bank (Zonal Office), "stating reporting for duty not allowed".
Ex. W11	Nil	Counter Statement filed by the Respondent Bank before the Concilation .
Ex. W12	26-07-2010	Minutes of Conciliation.
Ex. W13	05-08-2010	Letter sent by the Respondent Bank to the petitioner for deduction of excess salary.
Ex. W14	26-10-2010	Letter sent by the petitioner to the Respondent Bank for electing pension option.
Ex. W15	04-01-2011	Conciliation Failure Report.
Ex. W16	-	Medical Certificate of the petitioner dated 09-05-2009.
Ex. W17	-	Medical Certificate of the petitioner dated 01-08-2009.
Ex. W18	-	Medical Certificate of the petitioner dated 03-12-2009.
Ex. W19	-	Medical Bill of the petitioner.
Ex. W20	-	Salary Certificate of the petitioner for the month of June 2009.
Ex. W21	-	Extract of Bank Statement from the account of the petitioner for the period 03-08-2008 to 03-03-2010.

Ex. W22	-	Bank Pass Book of the petitioner showing withdrawal of the money on 13-01-2010 in the branch where he lastworked and to show that he went to the bank and reported for work, but was given the termination order by the Bank on 13-01-2010.

On the Management's side:

Ex. No-	Date	Description
Ex. M1	-	Extract of provision regd-voluntary cessaion of employment (bi-part settlement).
Ex. M2	31-12-2001	Letter from Respondent to petitioner regarding unauthorized absence.
Ex. M3	12-10-2007	Letter from Respondent to petitioner regarding unauthorized absence.
Ex. M4	03-03-2008	Petitioner's letter of authorization for recovery of over dues in COD A/c from salary and other terminal benefits.
Ex. M5	19-02-2009	Petitioner's letter of authorization for recovery of loan over dues from salary and other terminal benefits.
Ex. M6	20-08-2009	1st Notice to petitioner with postal receipts
Ex. M7	25-09-2009	2nd Notice to petitioner with postal receipts
Ex. M8	28-10-2009	3rd Notice to petitioner with postal receipts
Ex. M9	04-12-2009	Order of termination on "voluntary cessation" under Bipartite Settlement
Ex. M10	03-03-2010	Letter from Respondent to Petitioner regarding adjustment of gratuity against loan over dues
Ex. M11	20-03-2010	Letter from Respondent to Petitioner regarding loan over dues
Ex. M12	08-04-2010	Letter from Respondent to Petitioner regarding loan ever dues.

नई दिल्ली, 24 अगस्त, 2012

का.आ. 2987.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 14/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/66/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 24th August, 2012

S.O. 2987.—In pursuance of Section 17 of the Industrial Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. 14/2011) of the Central Government Industrial Tribunal/Labour Court, CHENNAI now as shown in the Annexure, in the Industiral Dispute between the employers in relation to the management of INDIAN BANK and their workmen, which was received the Central Government on 13-08-2012.

[No. L-12012/66/2010-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 7th August, 2012

Present: A.N. JANARDANAN, Presiding Officer

INDUSTRIAL DISPUTE No. 14/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workman]

BETWEEN

Sri R. Rajkumar : 1st Party/Petitioner

Vs.

The Dy. General Manager
Circle Head,.The Indian
Bank, HRM Cell
Circle Officer, Dr. Besant Road
Kumbakonam-612001 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : Sri J. Thomas Jeyaprabhakaran Authorized Representative

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour *vide* its Order No. L-12012/66/2010-IR(B-II) dated 23-02-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of the Indian Bank in dismissing from service of Sri R. Rajkumar,

Ex.Clerk/Shroff, Madhukkur Branch is legal and justified? What relief the concerned workman is entitled?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 14/2011 and issued notices to both sides. Both sides entered appearance through their authorized representatives and filed Claim, Counter and Rejoinder Statement as the case may be.

3. Claim Statement averments briefly reads read as follows:

Petitioner joined the services of the Bank of Thanjavur as Caretaker in 1979 and got absorbed as Sub-Staff in Indian Bank on its merger with Indian Bank in 1990. He got promoted as Clerk during August 1996. He was charge sheeted on 05-09-2008 alleging to have had (i) made debits on 21 occasions in SB A/c No. 518237614 of M/s. S. Ayyappan on various dates commencing from 19-04-2008 till 10-05-2008 by different sums *viz.* Rs. 20,000 each on 19 occasions, at Rs. 15,000 on 02-05-2008 and at Rs. 10,000 on 24-04-2008 by Withdrawal Slips as detailed in Para-3 (i) of the Claim Statement while working as SWO at Gopalasamudram Branch (ii) two credits as detailed on dated 03-05-2008 by cash deposit of Rs. 65,000 and the other dated 10-05-2008 by cash deposit of Rs. 1,60,000 were made without the knowledge of the SB Account Holder just to cover up and comouflage the unauthorized debits effected as above (iii) the relative credit vouchers are founds to be in his own handwriting which is specifically forbidden (iv) by siphoning of Rs. 65,000 for his personal enrichment he has attempted to cover up his acts by effecting credit on 03-05-2008 for total amount of Rs. 65,000 which he generated only by debiting the same SB Account on 03-05-2008 by as many as four debits made into the account for a total amount of Rs. 80,000 using his powers as SWO without any instrument (v) for the credit of Rs. 1,60,000 on 10-05-2008, the offset is nothing but nine surreptitious debits of Rs. 20,000 each totaling to Rs. 1,80,000 carried on the same date i.e. 10-05-2008 as SWO in the same account without being backed by instruments/knowledge of the account holder or his higher authority (vi) again to cover up and square up his misdeeds of debits extraneously made he has influenced a deposit customer Mr. V. Murugesan of the branch to avail loan of Rs. 1,80,000 on his RIP receipts on 31-05-2008 and routed the loan proceeds from the SB/ Ac No. 766509200 to SB A/c No. 518237614 of S. Ayyappan through his SB A/c No. 518237320 (vii) he has made an external borrowing of Rs. 1,45,950- (viii) he had not taken Tellers Cash Register Report before EOD and handed over the duly signed report with an intention to cover up his misdeeds.

4. A Show Cause Notice was preceded dated 19-08-2008 containing the allegations to which employee submitted reply on 04-09-2008 denying the allegations. Enquiry was held. Ex.MEX1 to Ex.MEX50 were marked and MW1 to MW4 were examined on the Management side. DW1 and DW2 were examined on the defence side. Charges (i) to (vi) were held proved by the enquiry report dated 12-02-2009. Charges (vii) and (viii) were held not proved. There had been no written complaint. The examination by the prosecution, the customer as its witness evidences the fear in the mind of the prosecution that customer will spill the beans disproving the allegations. Customer has duly owned the debits showing that the same were carried out with his knowledge, which the Disciplinary Authority considered in the least. Undertaking transactions on behalf of non-customers at their request to extend expeditious service is common in the banking industry which is a service orientation. The employee has limited education and knowledge of banking procedures. The factum of transfer of money from employee's account to customer's account evidences want of ill-intention and everything is transparent. By an order dated 28-03-2009 the proposed punishment of dismissal without notice for charge nos. (i), (ii), (iv) and (v) and "be brought down by two stages in the time scale of pay" for charges (iii) and (vi) were imposed which was after personal hearing on 02-03-2009 and considering his written statement dated 23-03-2009. Appeal dated 21-04-2009 was dismissed on 18-11-2009. Dismissal is illegal and unjustified and is in victimization and unfair labour practice. A capital punishment is to be imposed only in the rarest of rare cases where the charges are too serious and is out of deep rooted prejudice and hatred harboured by Disciplinary Authority against the employee. Availing loan from a known person coincidentally happens to be a customer cannot be a gross misconduct. Petitioner is to be reinstated into service with all benefits.

5. Counter Statement averments briefly read as follows:

Petitioner was working as a Single Window Operator who has act not only as a Cashier but also has to make entries in the accounts through the system. Every entry in an account should be supported by a voucher. On 30-05-2008 while V. Swaminathan was working as Single Window Operator, S. Ayyappan, an account holder deposited Rs. 50,000 and Swaminathan gave his updated Pass Book. The customer shouted that there was a shortage in the balance. On verification of records, Jeyachandran, Asstt. Manager observed that for nine transactions of Rs. 20,000 each dated 10-05-2008 there were no vouchers. It was found out on verification that the Rajkumar debited the account without vouchers and taken the amount of Rs. 1,80,000. Petitioner had been transferred to Mudukkar Branch on 10-05-2008. On 31-05-2008 (Saturday), petitioner, his house owner Mr. Murugesan, petitioner's son and Ravichandran came to the branch. Mr. Murugesan availed LOD amount of Rs. 1,80,000. The LOD proceeds were transferred to Muruguesan's account first and then Rs. 1,80,000 was transferred to petitioner's SB Account which again was transferred to SB Account of Ayyappan. Mr. Swaminathan had prepared the LOD documents and Mr. Ravichandran

had prepared the vouchers for loan transaction. Ravichandran had obtained Withdrawal Slips from the customer to make it appear that the withdrawals were supported by vouchers. There were 21 withdrawal slips with different dates between 19-04-2008 and 10-05-2008 for a total sum of Rs. 4,05,000. None of the withdrawal slips was bearing the 'cash paid" stamp and the respective transaction date. There was no signature or initial of the petitioner on the instruments. Ravichandran, Executive Committee Member of the Clerical Staff Union took steps to recover the amount. Petitioner was in the habit of debiting the account of some of the SB accounts and drawing the money for his use. Petitioner was charged for making debits on 21 occasions for a total amount of Rs. 4,05,000 without the knowledge of the account holder. Punishment does not call for interference, it being only justified. The submission of the duplicate instruments would only go to show that earlier entries made without the documents were irregular and unauthorized. Absence of written complaint would be of no avail as a defence. Punishment is not harsh, excessive or disproportionate. Dismissal only is subject matter of the reference. Punishment is only to be upheld.

6. Rejoinder Statement averments in a nutshell are as follows:

It is not brought to light that the duplicate instruments were prepared and tendered to cover up the earlier lapses of the petitioner, which no prudent man will agree to issue if the withdrawals are fraudulent ones, 21 in number. The dispute pertains the whole of the charge sheet and the punishments imposed.

7. **Points for consideration are:**

(i) Whether dismissal from service of Sri R. Rajkumar, Ex-Clerk/Shroff, Mudukkur Branch is legal and justified?

(ii) To what relief the concerned workman is entitled?

8. Evidence consists of the oral evidence of the petitioner as WW1 and Ex. W1 to Ex.W13 marked on consent on the petitioner's side and Ex. M1 to Ex. M56 marked on consent with no oral evidence adduced on the Respondent's side.

Points (i) & (ii)

9. Heard both sides. Perused the records, documents and evidence. Both sides argued in terms of their contentions in the respective pleadings. It is argued on behalf of the petitioner that the conduct of the petitioner in debiting and crediting the amounts by way of adjustments in helping a bank customer and being extraneous conduct in that direction cannot be termed as a misconduct more so a grave misconduct. A dispassionate perusal and consideration of the transactions would reveal that it is not a misconduct, being done as per customer's instructions regarding personalized transactions. It is not a usual conduct of a misdoer being patent to a viewer. These are transactions of split nature just to avoid to be done by an Officer and which is within the employee's power as a single window operator doing various functions. There was no need for so many transactions if the employee intended to misappropriate the amounts when it would have been in a much limited manner. The customer has not been examined as a witness; instead his brother is examined by the Management regarding the complaint. The complaint arose only out of a confusion in the midst of several businesses. It is clarified that the transactions pertain to hand loan from the party taken earlier. Charges do not stand proved and there is no loss to the Bank in money or image. The punishent is disproportionate to the gravity of the offence. It is cruel resulting in economic death which is by way of denial to terminal benefits and pension. The same is to be interfered with.

10. Contra arguments are that it is a case of misappropriation of money at the hands of the petitioner by way of withdrawal slips, 9 in number without any power or authority to do so. The vouchers were not available. Corresponding entries are not disputed. That vouchers are also wanting is not disputed. The deposits made by the petitioner are to cover up the unauthorized debits, practiced as a modus-operandi of the misdeeds to make believe evidence; contention that it is for adjustments and are as per instructions from the customer are untrue and not credible. The credit entries are made without vouchers. The charges are proved by all means from the evidence of the Management Witnesses Ramesh and Swaminathan, documents Ex. M16, Ex.M20, Ex.M43, Ex.W5, etc.

11. On an anxious consideration of the rival contentions and on scrutiny of the evidence and materials it is brought home that the petitioner's case is not at all credible to hold that his transactions have been genuine for adjustment and to aid a customer. Discernibly there has taken place willful debit and credits of amounts un-authorizedly to appropriate the money for the petitioner himself without vouchers or authorization from the customer. A written complaint is not always a legal imperative in order to initiate action. The entries are dubious. The enquiry has been held well. The finding is also proper and they are left intact.

12. Coming to the punishment the question is whether the same is disproportionate to the gravity of the offence? While such an employee, prone to graver conduct of misappropriating money by fraudulent transactions shall not be allowed to be continue in service by termination of his service, it could well be by way of Compulsory Retirement so that he is not totally put to economic death. Though the arguments for avoiding cruel punishment of dismissal from service are that there is no loss to the Bank in terms of money or image and that the amounts have been credited, they cannot be arguments tenable enough to accept the contention that some lesser pubishment short

of termination is to be effected. However in order to ensure that he is not put to economic death in a full manner it is thought expedient to impose on him a lesser punishment of Compulsory Retirement from service so that he may beget his superannuation benefits and pension which may provide some succour to sustain himself.

13. The punishment is orderd to be modified accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 7th day of August, 2012).

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri R. Rajkumar

For the 2nd Party/1st Management : None.

Documents Marked:

on the Petitioner's side

Ex. No.	Date	Description
Ex. W1	19-08-2008	Show Cause letter ref. COK: VIGIL: 56738:2008-09 dated 19-08-2008 by Asstt. General Manager/Disciplinary Authority issued to Sri R. Rajkumar
Ex. W2	04-09-2008	R. Rajkumar's reply to the Show Cause Letter
Ex. W3	05-09-2008	Charge Sheet Ref. COK: VIGIL: Claim Statement/56738: 2008-09 dated 05-09-2008 issued to Sri R. Rajkumar
Ex. W4	09-02-2009	Summing up of the defence representative Sri J. Suresh on the enquiry proceedings
Ex. W5	13-02-2009	Letter Ref. COK: VIGIL: 2008-09 dated 13-02-2009 by Disciplinary Authority enclosing the findings dated 12-02-2009 of the Enquiry Officer
Ex. W6	23-02-2009	Sri R. Rajkumar's comments over the Enquiry Officer's findings
Ex. W7	23-03-2009	Sri R. Rajkumar's reply to the Second Show Cause Notice
Ex. W8	28-03-2009	Punishment Order served on Sri R. Rajkumar by the Asstt- General Manager/Disciplinary Authority
	-	Ref. COK: VIGIL: 56738: 2008-09 dt. 08-03-2009
Ex. W9	21-04-2009	Appeal preferred by Sri R. Rajkumar before the Deputy General Manager/Appellate Authority against the order of punishment of the Asstt. General Manager/Disciplinary Authority
Ex. W10	19-11-2009	Letter Ref- HRM: DPC: 632: 2009 dated 19-11-2009 enclosing the orders of the Deputy General Manager/Appellate Authority dated 18-11-2009
Ex. W11	27-01-2010	Dispute raised under Section.2(A) of ID Act 1947 by Sri R. Rajkumar
Ex. W12	18-03-2010	Letter Ref. No. 7/14/2010-A/M dated 16-03-2010 by the Assistant Commissioner of Labour (Central), Madurai enclosing copy of the comments of the management dated 24-02-2010
Ex. W13	27-03-2010	Rejoinder submitted by Sri R. Rajkumar

On the Management's side

Ex. No.	Date	Description
Ex. M1	07-10-2008	
	04-11-2008	
	24-11-2008	
	25-11-2008	Proceeding of Enquiry
	02-12-2008	
	03-12-2008	
	10-12-2008	
	and	
	29-12-2008	
Ex. M2	14-10-2008	Defence Representative requesting adjournment
Ex. M3	16-10-2008	Bank's reply to Defence Representative-Posted the enquiry on 04-11-2008
Ex. M4	12-11-2008	Letter from Defence Representative to Indian Bank for adjournment of enquiry
Ex. M5	12-06-2008	Letter from the Branch Manager, Indian Bank, Gopalasamudram Branch addressed to Circle Head, Kumbakonam
Ex. M6	28-06-2008	Investigation report of Mr. N. Vaideeswaran, Manager CO/

		Kumbakonam and Mr. K.S. Ramesh, Branch Manager, Gopalasamudram Branch
Ex. M7	-	Statement of interrogation of Mr. Jeyachandran, Asstt. Manager, Gopalasamudram Branch
Ex. M8	-	Statement of Interrogation of Mr. V. Swaminathan, Cl/Sri Gopalasamudram Branch
Ex. M9	-	Statement of interrogation of Mr. Padmanaban, Daftari, Gopalasamudram Branch
Ex. M10	-	Statement of interrogation of Mr. T. Durairajan, Cash Peon, Gopalasamudram Branch
Ex. M11	27-06-2008	Investigation report dated 27-06-2008 of Mr. R. Chakrapani, Senior Manager, HO/Vigilance Department
Ex. M12	-	Interrogation statement of Mr. Rajkumar, (CSE), CI/Sri Madukkur Branch
Ex. M13	-	Interrogation statement of V. Murugesan, Customer, Gopalasamudram Branch
Ex. M14	-	Interrogation statement of V. Swaminathan, (CSE), Cl/Sh. Gopalasamudram Branch
Ex. M15	-	Interrogation statement of Mr. S. Jeyachandran, Asstt. Manager, Gopalasamudram Branch
Ex. M16	31-05-2008	Debit voucher of LOD A/c 774896538 of Mr. V. Murugesan dated 21-05-2008 for Rs. 1,80,000
Ex. M17	31-05-2008	Credit voucher of SB A/c 766509200 of Mr. V. Murugesan dated 31-05-2008 for Rs. 1,80,000
Ex. M18	31-05-2008	Debit voucher of SB A/c No. 766509200 of Mr. V Murugesan dated 31-05-2008 for Rs. 1,80,000
Ex. M19	31-05-2008	Credit voucher of SB A/c 518237320 of Mr. R. Rajkumar dated 31-05-2008 for Rs. 1,80,000
Ex. M20	31-05-2008	Debit voucher of SB A/c No. 518237320 of Mr. R. Rajkumar dated 31-05-2008 for Rs. 1,80,000
Ex. M21	31-05-2008	Credit voucher of SB A/c 518237614 of Mr. S. Ayyappan dated 31-05-2008 for Rs. 1,80,000
Ex. M22	10-05-2008	SB Challan dated 10-05-2008 for Rs. 1,60,000 of Mr. S. Ayyappan-A/c No. 518237614
Ex. M23	03-05-2008	SB Challan dated 03-05-2008 for Rs. 65,000 of Mr. S. Ayyappan-A/c No. 518237614
Ex. M24	10-05-2008	SB Challan dated 10-05-2008 for Rs. 8,000 of Mr. S. Ayyappan-A/c No. 518237614
Ex. M25	15-04-2008	FDR No. 769326473 dated 15-04-2008 favouring Mr. V. Murugesan for Rs. 1,50,000
Ex. M26	19-03-2008	FDR No. 766511312 dated 19-03-2008 favouring Mr. V. Murugesan for Rs. 1,50,000
Ex. M27	-	Copy of funds book register (Folio No. 131) of Gopalasamudram Branch
Ex. M28	-	Copy of cheque return register (Folio 10) of Gopalasamudram Branch
Ex. M29	02-02-2008	Credit voucher dated 02-02-2008 for Rs. 1,00,000 for the credit of SB A/c No. 518237320 of Mr. Rajkumar
Ex. M30	02-02-2008	Credit voucher dated 02-02-2008 for Rs. 1,45,950 for the credit of SB A/c No. 518252349 of Mr. Rajkumar and others
Ex. M31	02-02-2008	Debit voucher deated 02-02-2008 for Rs. 1,00,000 for the debit of SB A/c No. 518252349 of Mr. Rajkumar and others
Ex. M32	30-07-2008	Letter dated 30-07-2008 submitted by Mr. Rajkumar R, Cl/Sri Madukkur Branch addressed to AGM, Circle Office, Kumbakonam
Ex. M33	04-09-2008	Letter dated 04.09-2008 submitted by Mr. Rajkumar R, Cl/Sh Madukkur Branch addressed to AGM, Circle Office, Kumbakonam
Ex. M34	-	Copy of withdrawal slips of SB A/c No. 518237614 of Mr. S. Ayyappan numbering 21

Distinctive No.		Amount	Date
214302	20000		10-05-2008
214304	20000		10-05-2008
214303	20000		10-05-2008
214305	20000		10-05-2008

214306	20000	10-05-2008
214307	20000	10-05-2008
214309	15000	02-05-2008
214322	20000	03-05-2008
214321	20000	03-05-2008
214323	20000	03-05-2008
214324	20000	03-05-2008
214325	20000	07-05-2008
214361	20000	09-05-2008
214362	20000	09-05-2008
214363	20000	10-05-2008
214364	20000	10-05-2008
214365	20000	10-05-2008
214366	20000	10-05-2008
214367	20000	19-05-2008
214368	20000	26-05-2008
214308	20000	21-05-2008

Ex. M35	10-05-2008	Copy of VVR for transaction dated 10-05-2008
Ex. M36	09-05-2008	Copy of VVR for transaction dated 09-05-2008
Ex. M37	07-05-2008	Copy of VVR for transaction dated 07-05-2008
Ex. M38	03-05-2008	Copy of VVR for transaction dated 03-05-2008
Ex. M39	02-05-2008	Copy of VVR for transaction dated 02-05-2008
Ex. M40	24-04-2008	Copy of VVR for transaction dated 24-04-2008
Ex. M41	21-04-2008	Copy of VVR for transaction dated 21-04-2008
Ex. M42	-	Copy of VVR for 20 transactions
Ex. M43	-	Statement of Account of 5182337614 covering the period of 31-01-2008 and 10-05-2008 in the name of Mr. S. Ayyappan
Ex. M44	-	Statement of Account of 518237614 for the period of 10-04-2008 in the name of Sri S. Ayyappan
Ex. M45	-	Statement of Account of 518237614 covering the period 10-5-2008 and 31-5-2008 in the name of Mr. S. Ayyappan
Ex. M46	-	Statement of Account of 518237320 covering the period 02-01-2008 and 18-01-2008 in the name of Mr. R. Rajkumar
Ex. M47	-	Statement of Account of 518237320 covering the period 18-01-2008 and 17-02-2008 in the name of Mr. R. Rajkumar
Ex. M48	-	Statement of Account of 518237320 covering the period of 20-02-2008 and 29-03-2008 in the name of Mr. R. Rajkumar
Ex. M49	-	Statement of Account of 518237320 covering the period of 29-03-2008 and 07-05-2008 in the name of Mr. R. Rajkumar
Ex. M50	31-05-2008	Application -cum-pledge Letter for LOD No. 774896538 dated 31-05-2008 in the name of Sri V. Murugesan
Ex. M51	-	Copy of RIP Account opening form for No. 769326473
Ex. M52	-	Copy of RIP Account opening form for No. 766511312
Ex. M53	22.09.2008	Copy of SB withdrawal slip on SB Account No. 677509200 dated 22-09-2008
Ex. M54	22-09-2008	Copy of Cash Challan dated 22-09-2008 for Rs. 1,85,950 for 774896538
Ex. M55	29-12-2008	Efence Exhibit—The only exhibit is a letter received dated 29-12-2008 addressed to Enquiry Officer
Ex. M56	05-09-2008	Presiding Officer's summing up

नई दिल्ली, 24 अगस्त, 2012

का. आ. 2988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार शिपिंग कॉरपोरेशन ऑफ इंडिया एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं॰ 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/49 ऑफ 2006 को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2012 को प्राप्त हुआ था।

[सं. एल-31011/8/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 24th August, 2012

S.O. 2988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT-2/49 of 2006) of the Central Government Industrial Tribunal/Labour Court No. 2, MUMBAI now as shown in the Annexure in the Industrial Dispute between the employers

in relation to the management of Shipping Corporation of India and Others and their workmen, which was received by the Central Government on 13-08-2012.

[No. L-31011/8/2006-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

K.B. KATAKE, Presiding Officer

Reference No. CGIR-2/49 of 2006

Employers in Relation to the Management of Shipping Corporation of India and Anr.

1. The General Director (P & A)
Shipping Corporation of India
Shipping House 245,
Madame Cama Road
Mumbai-400 021.

2. The Proprietor
M/s. Dalia & Associates
314, Chandralok 'B'
Manav Mandir Road
Walkeshwar Road,
Mumbai-400 006.

AND

Their Workmen

1. The General Secretary
Maharashtra Shramik Sena
Khernagar, Bandra (E)
Mumbai-400 051.

2. The General Secretary
Seamen Sena Union of India
C/o. Shipping House
245, Madame Cama Road
Nariman Point,
Mumbai-400 021.

Appearances :

For the Employer (No. 1)	:	M/s. Mulla & Mulla & Craigie Blunt & Careo, Advocates.
For the Employer (No. 2)	:	Mr. M.B. Anchan, Advocate.
For the Union (No. 1)	:	No appearance.
For the Union (No. 2)	:	Mr. V.P. Patil, Advocate Mr. Ramesh Ghugare, Representative.

Mumbai dated the 2nd July, 2012.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-31011/8/2006-IR (B-II), dated 30-08-2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demands raised by the Maharashtra Shramik Sena on behalf of 22 workmen employed by the management of Shipping Corporation of India, Mumbai through the contractor M/s. Dalia & Associated as contained their letter dated 20-11-2004 is justified? If not what relief is the disputant union entitled to? Whether their demand for parity of wage and allowance vis-a-vis the works engaged in the canteen is justified and what relief are the workmen concerned entitled to?"

2. After receipt of the order of reference from Ministry, notices were issued to both the parties. Second party union No. 1 filed their statement of claim at Ex-5. They prayed to declare their demands mentioned in the letter dt. 20-11-.2004 as just, legal and proper. They have also prayed to grant all the demands contained in the union's charter of demands and to pay the arrears with 18% interest w.e.f. 20-11-2004. The first party be directed to remove the disparity in respect of payment of wages, allowances etc. between the workmen covered under the present reference and the 75 workmen who are colloquially known as Canteen Workers working with the first party.

3. The first party No. 1 resisted the statement of claim by filing their written statement Ex-9. According to them, there is no dispute much less industrial dispute between the company and its workmen for adjudication. The person mentioned in the schedule are not workmen of the company and as such the reference is liable to be rejected. The demand raised by the Union by its letter dt. 20-11-2004 is entirely against M/s. Dalia Associates who are the contractors of the company and as such the reference in respect of the alleged dispute against Shipping Corporation of India is not maintainable. According to them, Sai Krupa Catering services have no relevance to the present dispute inasmuch as the canteen has been closed down. It is for the union and the workmen to establish demand that the contractor who ultimately makes payment is in a position to bear the burden and as therefore they pray as far as Shipping Corporation of India is concerned, the reference may be rejected.

4. First party No. 2 also resisted the statement of claim of the second party by filing their written statement at Ex-10. According to the first party No. 2, they are the

contractor and their function is to disburse wages of the workmen concerned in the reference which is reimbursed by the first party No. 1 and also to liaison the work of EPF, ESIC, Gratuity, Labour Licences etc. According to them the contract amount received by them is distributed amongst the workers and it is not possible to give any additional amount, unless reimbursed by the principal employer.

6. Union filed their rejoinder at Ex-11 & Ex-12 repeating the averments made in the statement of claim and denied all the averments made by first party No. 1 in their written statement. Thereafter matter was fixed for evidence. Meanwhile Mr. Ramesh Gugare, General Secretary of Seamen Sena Union of India filed application (Ex-27) for impleading them as a party to this reference. He has also filed an irrevocable undertaking of the concerned workmen to represent them in this reference. As the other sides have no objection, the said application was allowed and Seamen Sena Union was impleaded as Union No. 2 in this reference. On 15-06-2012, Union No. 2 filed application Ex-28 alongwith settlement dtd. 13-06-2012 praying to dispose of the reference in terms of the said settlement. In the circumstances, I think it proper to dispose of the reference in terms of the settlement dtd. 13-06-2012. Thus the order:

ORDER

Reference is disposed of in terms of the settlement filed alongwith Ex-28.

Date: 2nd July, 2012

K.B. KATAKE, Presiding Officer

Before C.G.I.T. Mumbai
Ref I.D.A 49/2006
Between
S.C.I

VS.

Shipping House
Civil Maintenance
May it please Your Honour
By Consent of Parties the above referred be disposed of in terms of settlements dated 13-6-2012 annexed herewith.

Mumbai
15-6-2012
(V.P. Patil) Advocate
R.S. Pari
Advocate for S.C.I

RAMESH GHUGARE,
General Secretary
S.S.U.I.

MEMORANDUM OF SETTLEMENT

Name of the Parties : M/s. DALIA & ASSOCIATES 3/4, Chandralok "B" Manav Mandir Road, Walkeshwar, Mumbai-400 006.

AND

Civil Maintenance workers represented by Shri Ramesh Ghugare (General Secretary) Seamen Sena Union of India Mumbai-400 001.

Representing Employer : Shri J.M. DALIA M/s. DALIA & ASSOCIATES 3/4, Chandralok "B" Manav Mandir Road, Walkeshwar, Mumbai-400 006.

Representing Employees : Shri Ramesh Ghugare (General Secretary) 10, Bhupat Bhavan, Ground floor, Vaju Kotak Marg, Mumbai-400 001.

SHORT RECITAL OF THE CASE :

The General Secretary of the previous representing Union for the Civil Engg. & Misc. Workmen had served the Charter of Demands for the Wage revision and other benefits for the period effective from 01-07-2002 to 30-06-2012 (hereinafter referred to as Trade Union) working with the M/s. Shipping Corporation of India Ltd., (hereinafter referered to as Principal Employer) Shipping House, 245, Madame Cama Road, Mumbai 400 021. On receipt of the said demands, the General Secretary of the Union was called for discussion. Now these Civil Engg. & Misc. Workmen are represented by Seamen Sena Union of India under the presidency of Hon'ble Shri Anandrao Adsul (M.P. Lok-Sabha) and the General Secretary Shri Ramesh Ghugare effective from 2006. The discussions for the above mentioned wage revision were held between the management of the Shipping Corporation of India and the Union on 19th December 2011. The necessary directions have been given to the service provider contractor M/s. Dalia and Associates by the Principal Employer to conclude this Wage Revision Agreement. After the negotiations the parties involved have now arrived at an amicable and mutually accepted Settlement as per Section 18(1) of The Industrial Disputes Act, 1947 read with Section 2(s) of the said Act, on following terms and conditions :—

TERMS OF SETTLEMENT:

1. Period of Settlement:

The said revision shall be valid and effective from 01-07-2002 for a period of 10 years up to 30-06-2012 and the same will not be revised on any ground during the said period of 10 years. No additional demands

of whatseover nature will be made by the Union during the period of validity of this settlement.

2. Revised Pay Scales:

The existing pay scales applicable to the Civil Engg. & Misc. Workmen/Supervisors are proposed to be revised as under:—(w.e.f. 01-07-2002).

Grade: Workmen (18 Nos.) Rs. 4350-150-7350

Grade: Supervisors (4 Nos.) Rs. 4500-150-7450

3. Fixation:

The basic pay of the Civil Engg. & Misc. Workmen/ Supervisors shall be fixed at the starting in the grade, i.e. Rs. 4350 for Workmen and Rs. 4500 for Supervisors w.e.f. 01-07-2002.

4. The date of increment of the Civil Engg. & Misc. Workmen/Supervisors shall be 01-07-2003, 01-07-2004, 01-07-2005, 01-07-2006, 01-07-2007, 01-07-2008, 01-07-2009, 01-07-2010, 01-07-2011, 30-06-2012.

5. Dearness Allowance (DA):

The Dearness Allowance payable would be as per new DA Scheme of Govt. of India and based on average industrial DA pattern. The Dearness Allowance will be computed and paid on quarterly basis effective from 1st of January, April, July and October of each year as per the practice in the following manner:

Oct., Nov., Dec.	1st January
Jan., Feb., Mar.	1st April
Apr., May, June	1st July
July, Aug., Sept.	1st October

6. House Rent Allowance without production of rent receipt:

House Rent Allowance w.e.f. 01-07-2002 shall be @ 30% of the Basic pay per month.

7. City Compensatory Allowance:

City Compensatory Allowance w.e.f. 01-07-2002 shall be @ Rs. 200 per month for Basic Pay up to Rs. 6499 per month and @ Rs. 300 per month for Basic Pay on and above Rs. 6500 per month.

8. Reimbursement of Children Education Allowance:

Each Civil Engg. & Misc. Worker/Supervisor would be entitled to reimbursement of Children Education Allowance @ Rs. 100 per month per child with maximum of Rs. 200 per month w.e.f. 01-07-2002. This amount will be paid only to those Workmen/ Supervisors whose children are studying in schools/ colleges subject to their producing documentary evidence to this effect.

9. Reimbursement of Transport Subsidy:

Each Civil Engg. & Misc. Worker/Supervisor would be entitled to reimbursement of Transport Subsidy @ Rs. 600/- per month w.e.f. 01-07-2002.

10. Reimbursement of Academic Development Allowance:

Each Civil Engg. & Misc. Worker/Supervisor would be entitled to reimbursement of Academic Development Allowance @ Rs. 525 per month w.e.f. 01-07-2002.

11. Canteen Allowance:

Each Civil Engg. & Misc. Worker/Supervisor would be entitled to Canteen Allowance @ Rs. 1600 per month w.e.f. 01-07-2002.

12. Reimbursement of Medical Benefits:

W.e.f. 01-07-2002 all Civil Engg. & Misc. Workmen/ Supervisors shall be entitled to reimbursement of medical claims limited to one month's (Basic Pay + DA) per annum. It will be paid on monthly basis @ 1/12th of (Basic Pay + DA) applicable in the month of July of each year.

13. Leave Travel Concession:

W.e.f. 01-04-2004 all Civil Engg. and Misc. Workmen/ Supervisors shall be entitled to LTC by 2nd class AC sleeper. For this purpose this block will be considered as 2004—2006 block. (Ending on 31-03-2006). In lieu of the enjoyment of LTC facility to any place in India, Civil Engg. and Misc. Workmen/Supervisors shall have an option to en-cash this facility restricted to 75% of entitled class Rail fare up to 1500 kms, each way for a maximum up to 4 full tickets on the basis of certification. Encashment of LTC shall not be allowed with respect to dependant parents. All Civil Engg. and Misc. Workmen/Supervisors will be given similar facilities as in admissible to the non-clerical staff member of the Principal Employer as far as 'dependants', 'entitled class' and advance payment in connection with LTC Scheme is concerned.

14. Provident Fund : Recovery/Reimbursement :

The contractor will recover the employee's contribution to the PF Regulation and appropriate amount will be deposited with the PF Commissioner along with the matching contribution from the contractor/Principal Employer within a period, as being specified by the Office of PF Commissioner from time to time. Present rate of employee's contribution towards PF is @ 12% of (Basic Pay + DA) per month. Contractor/Principal Employer will contribute towards PF and administration charges at @13.61% of (Basic + DA) per month.

15. Duty Hours, Attendance Card and Overtime Working etc. :

Duty Hours of Civil Engg. and Misc. Workmen/ Supervisors on working days shall be 9:45 am to 06:00 pm from Monday to Friday with 30 minutes lunch break from 13:15 hrs to 13:45 hrs. Each worker will be entitled P.L./C.L./Optional Holiday/Sick Leave/ Encashment of Leave as per rules prevailing from time to time in the organization of the Principal Employer. After signing this settlement Saturday will be treated as a half-day (4 working hours i.e. 9:45 am to 01:45 pm on Saturday).

There will not be any arrears implication an account of overtime for the proceeding period O.E. no overtime will be payable on this account till the day of the settlement of the Industrial Dispute and closure of pending litigation.

Principal Employer shall provide attendance cards to all the Workmen/Supervisors and also ensure that the Workmen/Supervisors do punch their attendance cards in to the time punching machine provided at the premises of the Principal Employer to registar their in-punch and out-punch timings.

16. Bonus and Gratuity :

All workmen/Supervisors will be paid Bonus @ 8.33% of their respective (Basic Pay+DA) per month.

All Workmen/Supervisors will be paid Gratuity @ 1/ 26th of their respective (Basic Pay+DA) per month.

17. Mediclaim Insurance Scheme :

Employee State Insurance Scheme stands discontinued and in its place the Contractor shall ensure and assist each worker to take out Mediclaim Insurance Policy from any of the Government Insurance Companies to meet Medical/ hospitalization needs of the Worker/Supervisor. His wife, children and dependant family members on yearly basis w.e.f. 01-07-2002 each workmen/ Supervisor shall be paid a fixed monthly amount of Rs. 715 for this purpose. The contractor shall have to certify and furnish details of Mediclaim Policies of all his Workmen/Supervisors to the Principal Employer by and of August each year.

18. Stitched Uniform, Shoes and Socks, Woollen Jersey, Umbrellas etc :

W.e.f. 01-01-2006 each contract workman shall be supplied with stitched uniforms, shoes and socks, woollen jersey, umbrella for office use by the Principal Employer. However the contractor must ensure that the existing colour scheme (full sleeve shirt of light blue colour and dark blue pant) and stitching pattern of uniform and shoes is provided properly.

19. There will not be any separate designations as Plumber/Carpenter/Meson etc. with respect to these Workman/Supervisors. In addition of their existing duties they may be assigned the following duties as may be deemed fit by the Principal Employer's office in Mumbai.

(a) Photocopying work.

(b) Identical work as per Peon category such as shifting of office records/files etc. in the office premises.

(c) Any other identical work as per the non-clerical workmen as may be deemed fit by the Principal Employer.

20. The Principal Employer shall help the Workmen/ Supervisors to get Housing loan facility up to 60 monthly salaries (Basic Pay+DA) with immediate effect from LIC/HDFC etc. or such other organization and the Principal Employer will reimburse the interest subsidy to the Workmen to the extent of actual interest paid in any Financial year over and above 4% which is the prevailing housing loan interest of the Principal Employer.

21. The list of the 18 workmen and 4 Supervisors who will get this benefit is enclosed as per Annexure-1. Contractor will not employ any "Badli" Worker/ Supervisor or substitute and in case there is attrition for any reason, no additional or substitute Worker/ Supervisor will be engaged.

22. The list of 18 workmen and 4 supervisors shall also be provided with annual function passes and Diwali gifts on similar lines extended by the Principal Employer to the regular non-clerical employees.

23. The Principal Employer shall ensure continuity of service of these Workmen/Supervisors till their date of Superannuation (up to 60 years of age), even if the present contractor ceases and someone else is appointed who shall absorb these Workmen/ Supervisors.

24. With this revision as set out above, all relevant clauses of the existing service conditions in respect of Civil Engg. and Misc. Workmen/Supervisors stand modified to the extent stated herein.

25. The Union agrees and accepts that the Civil Engg. and Misc. Workmen/Supervisors shall extend all co-operation to the contractor to maintain the properties of Principal Employer to the satisfaction of the Management of the Principal Employer.

26. It is expressly committed by both the existing Contractor and the existing Union that they both shall extend whole-hearted co-operation to the new Contractor and to the new Union for smooth transfer in

cordial manner whenever the situation so warrants for a switch over to the new contractor or to the new Union.

27. Law and Jurisdiction:

This agreement shall be governed by and construed in accordance with the Indian Legislation and the parties agrees to the non-exclusive jurisdiction of courts and respective Labour Commissioners (Central) or the appropriate labour/arbitration authorities, etc. in Mumbai region only.

This settlement is contingent on successfull withdrawal of impending litigations.

Also the parties signing this Memorandum of Settlement further agrees that they will withdraw the present pending C.G.I.T. case with signing this settlement successfully.

28. Saving Clause :

With respect to the above mentioned clauses and existing service conditions enjoyed by the Civil Engg. and Misc. Workmen stands modified to the extent stated herein. All the remaining clauses in the existing Agreement (existing terms and conditions) shall remain unchanged unless amended by a fresh agreement mutually agreed between the Principal Employer/Contractor and the Union.

Sd./-
For M/s. Dalia & Associates
(Existing Contractor)

Sd./-
For Seamen Sena
Union of India
(As a Union)

Sd./-
1. Shri J.M. Dalia

Sd./-
1. Shri Anandrao Adsul
(President, M.P. Lok-Sabha)

Witnesses on behalf of
Principal Employer)
(Shipping Corporation of India)

Sd./-
(1) Sashikala Charles
VP (HRA)

Sd./-
2. Shri Vishnu Tandel
(Working President)

Sd./-
(ii) Venu Gopal DGM
(ER&A)

Sd./-
3. Shri Ramesh Ghugare
(General Secretary)

Witnesses on behalf of
Employees.

Sd./-
(i)

Date:13/06/2012

(ii) Sd./-

(iii) Sd./-

Place : Mumbai,

ANNEXURE 1

THE SHIPPING CORPORATION OF INDIA LTD., MUMBAI

(AS A PRINCIPAL EMPLOYER)

LIST OF CIVIL ENGG. AND MISC. WORKMEN

Sr. No.	Name of the Workmen	Date of Joining	Ticket No.	Category
(1)	(2)	(3)	(4)	(5)
1.	Mr. Anant D. Sawant	01-05-1983	C.M. 02	Supervisor
2.	Mr. Shashikant V. Mestry	05-02-1986	C.M. 09	Workman
3.	Mr. Ramdas J. Newalkar	24-03-1987	C.M. 21	Workman
4.	Mr. Ramkrishna G. Parab	28-04-1987	C.M. 20	Workman
5.	Mr. Mahesh Ram	21-04-1988	C.M. 19	Workman
6.	Mr. Pramod D. Parab	10-05-1988	C.M. 06	Workman
7.	Mr. Hemchandra V. Naik	01-08-1988	C.M. 04	Workman
8.	Mr. Madhukar D. Dhanawade	21-10-1988	C.M. 12	Workman
9.	Mr. Chandrakant T. Tervenkar	05-12-1988	C.M. 15	Supervisor
10.	Mr. Yashwant P. Dhuwali	18-02-1989	C.M. 18	Supervisor
11.	Mr. Arvind S. Mestry	24-03-1989	C.M. 08	Workman
12.	Mr. Santosh A. Chavan	01-04-1989	C.M. 14	Workman
13.	Mr. Anil V. Sawant	12-05-1989	C.M. 13	Workman
14.	Mr. Sharad K. Mhatre	26-06-1989	C.M. 11	Workman
15.	Mr. Suresh V. Nirmal	05-07-1989	C.M. 17	Workman
16.	Mr. Krishna J. Mestry	20-06-1990	C.M.	Workman
17.	Mr. Sanjay C. Sawant	12-12-1990	C.M.	Workman
18.	Mr. Suyambudurai S. Nadar	12-01-1992	C.M. 22	Workman
19.	Mr. Ramachandra K. Marathe	10-07-1993	C.M. 05	Workmen Retd. 31-01-12
20.	Mr. M. Chandradas	15-07-1993	C.M. 01	Supervisor
21.	Mr. Vishwanath Pandav	01-07-1997	C.M. 23	Workman
22.	Mr. Anant Narayan Sawant	01-02-1986	C.M.	Workman Retd. 2007

नई दिल्ली, 27 अगस्त, 2012

का. आ. 2989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 06/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-08-2012 को प्राप्त हुआ था

[सं. एल-12012/177/2004-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2005) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 22-08-2012.

[No. L-12012/177/2004-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 2nd July, 2012

Present :

SHRI S.N. NAVALGUND, Presiding Officer

C.R. No. 06/2005

I Party	**II Party**
Shri Sharnabasappa Mallappa Hungud, R/o Olukoti Oni, At & Post : Naregal Taluk, Ron, Gadag (Karnataka)	The Regional Manager, Central Bank of India, Regional Office, Ashwamedha Trade Centre, Dajibanpeth, Hubli (Karnataka State)

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12012/177/2004-IR(B-II) dated 17-12-2004. Subsequently when the first party brought to the notice of the Ministry that his father's name was mentioned as Basappa in the address column of the order copy forwarded, a corrigendum came to be issued vide order dated 12th May, 2008 mentioning his father's name as Mallappa in the place of Basappa for adjudication on the following Schedule :

SCHEDULE

"Whether the action of the management of Central Bank of India is justified in terminating the services of Shri Sharanabasappa Mallappa Hungund, Part Time Safai Karmachari without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947? If not, what relief the workman is entitled to?"

2. After receipt of the reference and issuing notice to both the sides to appear on 24-02-2005 first party workman filed his claim statement on 14-02-2005 and on 24-02-2005 Shri M. Rama Rao, General Secretary, Dharwad District Bank Employees Association filed authorization for representing the first party in this reference and on the same day Shri F. G. Gudheyyanavar, Advocate filed vakalat for second party and receiving the copy of claim statement after availing some adjournments filed the Counter statement on 24-01-2006.

3. The first party in his claim statement while alleging that he joined at Naregal branch of the second party as part time Safai Karmachari from 13-12-1997 worked till 7-02-2004 and that the Manager extracted from him the work of sub-staff like daily Voucher stitching; writing in the voucher entries book daily after stitching daily vouchers such as number of debit and credit slips pertaining to each department; Making xerox copies of the Office documents from Karanataka Xerox Centre and Veereshwar Xerox Centre daily at least 4 times; going to the post office daily to make registered post, VPL, ordinary posts at least twice a day; get the office work duly typed at Rafi Vanijya Vidhyalaya once in 2-3 days; bringing tea, coffee, tiffin, meals etc. daily for about 3-4 times and delivering bills, notices to the customers at least once in a day and obtained his signature to the vouchers from 3-01-998 to 29-12-1998, 106 in numbers; from 16-01-1999 to 30-12-1999, 241 in number; from 4-01-2000 to 31-12-2000, 258 in number; from 2-1-2001 to 21-11-2001, 208 in number; from 18-2-2002 to 27-12-2002, 235 in number; from 1-01-2003 to 31-12-2003, 306 in number and from 1-01-2004 to 7-2-2004, 44 in number like Casual Labour Payment Debit Voucher; Stationery purchase Davit Voucher; Xerox debit voucher; registered post expenses debit voucher; VPL registered post expenses debit voucher; ordinary post expenses debit voucher; KEB bill payment debit voucher and Telephone bill payment debit voucher and that he was paid wages at the daily rates of Rs. 10/- between 13-12-1997 to 31-12-1997; Rs. 25/- per day between 1-12-1998 to 15-04-2000; Rs. 35/- between 2-05-2000 to 31-08-2000; Rs. 45/- between 1-9-2000 to 10-1-2002 and Rs. 60/- per day between 11-1-2002 to 7-2-2004 and that the second party suddenly posting one Mr. Sridhar S. Mangodi from Hubli Extension Counter to report for duty at Naregal branch dispensed with his services unceremoniously from 7-2-2004 with a clear oral instruction not to come for work from 9-2-2004. He further made an attempt to make out a case for regularization of his services asserting that while joining the services the then branch manager of Naregal branch Shri H.F. Kuri had taken an application from him for appointment saying that there existed a clear vacancy due to resignation of one Shri T. Buddanna, Safai Karmachari and that his job would be made permanent within 2 to 3 years etc. without any basis. Moreover the schedule of the reference also since has no scope to consider the claim of the first party for regularization of his services I feel it not necessary to quote or mentioned his allegations made in this regard.

4. The first party after making assertions in the claim statement regarding details of services he allegedly rendered from 13-12-1997 to 7-02-2004 besides making assertion for regularization of his services ultimately prayed to pass a award to declare the termination of his services from 7-2-2004 as illegal, null and void in operative in law and to direct the second party to reinstate him in the services with regularization, full back wages, continuity of service etc. and to pay cost of Rs. 10,000.

5. In the counter statement while denying the assertions made in the claim statement that the first party was taken to service by the then branch Manager Shri H.F. Kuri assuring that his services would become permanent, contended that his services were availed as part time Safai Karmachari between 13-12-1997 to 7-2-2004 intermittently paying daily wages upto 7-2-2004 and subsequent to 7-02-2004 he himself voluntarily left his work and thereafter the second party got appointed one Sridhar as per the Central Bank of India Employees Service Regulation and that he has not worked continuously for a minimum period of 240 days in a year which is required to claim regularization of his services with the second party. It is further contended the first party who himself do not turn up for work from 7-02-2004 onwards has approached this authority with false plea and that he is not entitle for any relief claimed by him.

6. After completion of the pleadings when the second party was called upon to lead evidence the learned advocate appearing for the second party while filing the affidavit of Shri Chidambar Mutaik, then branch manager of second party bank at Naregal branch examining him on oath as MW1, and later on 21-07-2010 while producing 60 vouchers pertaining to the first party, with the consent of the authorized representative of the first party got them exhibited as Ex. M1 Series and closed his side. The Representative of the first party who in the cross examination of MW1 got marked the certified copies of letter No. RO/HUB/PRS/99-2000 dated 14-01-2000 addressed by the Assistant Regional Manager to District Employment Exchange Office; letter No. PRS/PTSK/01-02/78 dated 17-11-2001 written by the branch manager to Regional Office, Hubli to consider the case of first party favourably saying that sine he had learnt that T. Buddanna transferred from Raichur Branch to work as PTSK has resigned from 11-8-1997 as they are getting the work done through the first party as casual labour on temporary basis; letter No. PRS/PTSK/02-03/01 dated 4.07.2002 addressed by the branch manager of Naragel to Regional Office, PRS department forwarding first party's letter for his appointment as PTSK; Letter of the first party dated 22-04-2002 to the Regional Manager of the second party to absorb him as PTSK with scale wages; Letter No. RO/HUB/OPR/02-03/480 dated 16-08-2002 addressed by the Regional Manager of the second party of Naragel branch pointing out certain irregularities/shortcomings pointed out by the internal audit; letter No. PRS:2002-03 dated 6-02-2003 addressed by the Regional Manager to the Branch Manager, Naragel Branch to furnish details of the period for which the first party has been engaged as casual worker since 1-10-2001 in continuation of his letter dated 15-01-2002 and Letter of Branch Manager, Naragel branch to the JRS Department, Regional Office, Hubli dated 22-7-2004 highlighting certain facts taken before the ALC, Hubli in the conciliation proceedings as Ex. W1 to W7 respectively and also office copy of the claim petition filed by the first party before the ALC(C), Hubli; Xerox copy of the proceedings before the ALC, Hubli; certified copy of the letter given by the first party to the ALC, Hubli along with list of vouchers and conciliation failure report as Ex.W8 to W11 respectively, while filing the affidavit of the first party and examining him on oath as WW1 got exhibited the calculation sheet prepared by the first party showing the number of days worked by him and Xerox copy of the notification issued by the Govt. of India, Ministry of Finance dated 6-08-1990 as Ex. W12 & 13 respectively and also by filing the affidavit of two customers of the second party's Naragel Branch by name Shri Balabatii Abdulraiman and Shri A.I. Balbatti examined them on oath as WW2 and WW3 respectively in the examination of WW2 got exhibited Notarised copies of his Voter ID and Pass book of his SB Account at Naragel Branch as Ex. W14 and 15 respeectively and in the evidence of WW3 the notarized copy of his Voter ID and pass book of his SB account at Naragel branch as Ex. W16 and 17 respectively.

7. With the above pleadings, oral and documentary evidence brought on record by both the sides when the matter was posted for arguments the second party counsel as well as the representative of the first party filed their written arguments and explained the same. The learned advocate appearing for the second party in support of his arguments furnished the following citations :

1. 2002 Law Suits (Supreme Court 1028)
2. AIR 2010 SC P-198
3. 2011 LAB IC NOC 23(P&H)
4. 1997 Law suits (SC) P. 540
5. 2009(5) KCCR SN 404
6. 2000 Law Suits (Karnataka) P 171
7. 2010 Law Suits (Madras) P 2389
8. Supreme Court of India in Civil Appeals No. 3595- 3612 of 1999. 1861-2063 & 3849/2001.
9. AIR 1995 SC P 962
10. 1989 Law Suits (AP) P 174.

Whereas the learned representative for the first party cited the following decisions:

1. ILR 2001 KAR 3407

   P.V. Reddi. CJ & SR Bannurmati. J

2. ILR KAR 2000 4356

   Y Bhaskar Rao, CJ & V. Gopala Gowda. J.

3. 1985 LAB IC 1733-Chinnappa Reddy & V. Khalid. JJ

8. As already adverted to by me above, since the schedule of reference is as to "Whether the action of the management of Central Bank of India is justified in terminating the services of Shri Sharanabasappa Mallappa Hungund, Part time Safai Karmachari without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947? If not, what relief the workman is entitled to"?, there is no scope to consider the claim of regularization of the services of the first party and admittedly no compliance is made as contemplated under Section 25F of the Industrial Disputes Act before the alleged termination of the first party w.e.f. 7-2-2004 contending that from that day onwards he himself voluntarily stopped attending the work, I am required to consider whether the first party has proved having worked for 240 days in preceding 12 months prior to alleged illegal termination of service amounting to retrenchment and whether he had on his own stopped attending the work at second party bank from 7-02-2004 onwards. Because in terms of Section 25 F of the Industrial Dispute Act, 1947 an order retrenching a workman would not be effective unless the conditions precedent therefor, are satisfied which postulates to be fulfilled by the employer by giving one month notice in writing indicating the reasons for retrenchment or wages in lieu thereof and payment of compensation equivalent to 15 days average pay for every completed year of continuous service or in part thereof in excess of six months. For the said purpose it is necessary to notice the definition of "continuous service" as contained in Section 25(B) of the Act. In terms of Sub-Section (2) of Section 25(B) if a workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made as actually worked under the employer 240 days within a period of one year he will be deemed to be in continuous service. By reason of the said provisions legal fiction being created, the retrenchment of such employee without complying the requirements of Section 25F would amounts to illegal retrenchment and his services are deemed to have been continued. Therefore, now let me proceed to consider whether before the alleged date of termination of the service i.e. 7-02-2004 in the preceding 12 months he had served for a period of 240 days.

9. It is pertinent to note from the cross-examination of MW1 that he has agreed during the year 1997 E. Buddanna working as Safai Karmachari at Naragel branch resigned on 11-08-1997 and thereafter from 13-12-1997 the first party has worked at Naragel branch in the vacancy arising from his resignation. In the background of this admission when the documents of the management got produced and exhibited at the instance of the first party at Ex.W1 and W5 are read it is crystal clear that in the vacancy arose due to the resignation of E. Buddanna, the branch manager of the second party bank continuously engaged the services of first party as casual labourer till 7-2-2004 to which post posting of a permanent Safai Karmachari was posted. Because Ex. W1 is a letter dated 14-1-2000 addressed by the Assistant Regional Manager of the second party to District Employment Exchange office, Gadag to the effect that there is one vacancy of one part time Safai Karmachari at Naragel branch on 1/3rd scale wages and they request to sponsor 5 candidates belonging to SC/ST community preferably local or from nearby villages who fulfill the service conditions of that post and Ex. W5 is a letter addressed by the Regional Manager of the second party to the branch manager of the Naragel branch dated 16-08-2002 wherein he has highlighted some of the irregularities/shortcoming pointed out by internal audit in functioning of that branch which regarding casual labourers reads as under."Branch is engaging service of casual labour in place of PTSK who is on unauthorized leave. The casual labour is allowed to work full time and has access to all departments and records. Service of the casual labour are utilized in counter for ledger/pass book entries."

10. As adverted to by me above reading these two documents secured from the second party by the first party in the background of the admission of MW1 that E. Buddanna, Safai Karmachari working at Naragel branch resigned on 11-08-1997 it is clear that the bank did take the services of first party continuously and has now picked up some of the vouchers where they have described the payments made therein as towards the casual labourer at Ex.M1 series and tried to demonstrate that in preceding 12 months to the alleged date of termination he had not worked for 240 days as such there was no need to comply the requirements of Section 25F. But this attempt on the part of the second party bank is falsified by the evidence brought on record by the first party through Ex.W10. Ex.W10 is an application given by the General Secretary of the Union to the Assistant Labour Commissioner in the conciliation procedings to call for the original debit voucher of the relevant dates so as to verify the same with the dates mentioned in the enclosed list dealing the vouchers that are said to be submitted by the first party towards payment. According to the list of vouchers accompanying this letter between 3-01-1998 to 7-2-2004 there were vouchers for 945 days. It is borne out from the proceedings before the ALC copy of which is produced at Ex.W9 that when General Secretary of the Union representing the first party called upon second party for the production of the vouchers pertaining to the first party given towards payment to verify with the dates mentioned in enclosed list second party which went on dodging on the ground that it is for the

workman to establish that he worked for 240 days and he cannot call upon the documents from the second party, ultimately when the application at Ex.W10 was given with a list of vouchers allegedly taken from him for payment the then branch manager who was MW1 himself agreed to verify the list with the vouchers available in the branch and ultimately while tallying the same with the vouchers available in the bank in the presence of the workman's representative Shri Anand Hegde confirmed at the bottom of each page of the list the signature of Shri S.M.. Hungund, the complainant i.e. the first party is affixed on all such vouchers. The endorsement made at the bottom of each page of the list reads as under:

> "The above vouchers have been checked by both Representative Mr. Mutalik C.N., Br. Manager, Naragel Branch and by workman representative Anand Hegde and it is confirmed that the signature of Shri S.M. Hungund, the complainant is affixed on all vouchers".

If this is the position there is no hurdle to place hand on this document to see whether the first party before the alleged date of termination i.e. 7-02-2004 worked continuously for a period of 240 days in preceding 12 months. Since the date of alleged termination is 7-2-2004 and the last voucher as admitted is 7-2-2004, preceding 12 months relates back to7-2-2003. As per the list annexed to Ex.W10, from 7-2-2003 days worked is as under:

Date, Month, Year	P & L	Particulars	Days
(1)	(2)	(3)	(4)
7-02-2003	P & L		01
8-02-2003	"		01
10-02-2003	"		01
11-02-2003	"		01
13-02-2003	"		01
14-02-2003	"		01
15-02-2003	"		01
17-02-2003	"		01
18-02-2003	"		01
19-02-2003	"		01
20-02-2003	"		01
21-02-2003	"		01
22-02-2003	"		01
24-02-2003	"		01
25-02-2003	"		01
26-02-2003	"		01
27-02-2003	"		01
28-02-2003	P & L		01
3-03-2003	"		01
4-03-2003	"		01
5-03-2003	"		01
6-03-2003	"		01
7-03-2003	"		01
8-03-2003	"		01
10-03-2003	"		01
11-03-2003	"		01
12-03-2003	"		01
13-03-2003	"		01
15-03-2003	"		01
17-03-2003	"		01
18-03-2003	"		01
19-03-2003	"		01
20-03-2003	"		01
21-03-2003	"		01
22-03-2003	"		01
24-03-2003	"		01
25-03-2003	"		01
26-03-2003	"		01
27-03-2003	"		01
28-03-2003	"		01
29-03-2003	"		01
31-03-2003	"		01
3-04-2003	"		01
4-04-2003	"		01
5-04-2003	"		01
7-04-2003	"		01
8-04-2003	"		01
10-04-2003	"		01
11-04-2003	"		01
12-04-2003	"		01
15-04-2003	"		01
16-04-2003	"		01
17-04-2003	"		01
19-04-2003	"		01
21-04-2003	"		01
22-04-2003	"		01

(1)	(2)	(3)	(4)
23-04-2003	P & L		01
24-04-2003	"		01
25-04-2003	"		01
26-04-2003	"		01
28-04-2003	"		01
29-04-2003	"		01
30-04-2003	"		01
2-05-2003			
3-05-2003	"		01
5-05-2003	"		01
6-05-2003	"		01
7-05-2003	"		01
8-05-2003	"		01
9-05-2003	"		01
10-05-2003	"		01
12-05-2003	"		01
13-05-2003	"		01
14-05-2003	"		01
15-05-2003	"		01
16-05-2003	"		01
17-05-2003	"		01
19-05-2003	"		01
20-05-2003	"		01
21-05-2003	"		01
22-05-2003	"		01
23-05-2003	"		01
24-05-2003	"		01
25-05-2003	"		01
26-05-2003	"		01
27-05-2003	"		01
28-05-2003	"		01
29-05-2003	"		01
30-05-2003	"		01
31-05-2003	"		01
2-06-2003	"		01
3-06-2003	"		01
4-06-2003	"		01
5-06-2003	"		01
6-06-2003	"		01
7-06-2003	"		01
9-06-2003	P&L		01
10-06-2003	"		01
11-06-2003	"		01
12-06-2003	"		01
13-06-2003	"		01
14-06-2003	"		01
16-06-2003	"		01
17-06-2003	"		01
18-06-2003	"		01
19-06-2003	"		01
20-06-2003	"		01
21-06-2003	"		01
22-06-2003	"		01
24-06-2003	"		01
25-06-2003	"		01
26-06-2003	"		01
27-06-2003	"		01
28-06-2003	"		01
30-06-2003	"		01
1-07-2003	"		01
2-07-2003	"		01
3-07-2003	"		01
4-07-2003	"		01
5-07-2003	"		01
7-07-2003	"		01
8-07-2003	"		01
9-07-2003	"		01
10-07-2003	"		01
11-07-2003	"		01
12-07-2003	"		01
14-07-2003	"		01
15-07-2003	"		01
16-07-2003	"		01
17-07-2003	"		01
18-07-2003	"		01
19-07-2003	"		01
21-07-2003	"		01
22-07-2003	"		01
23-07-2003	"		01

(1)	(2)	(3)	(4)
24-07-2003	P&L		01
25-07-2003	"		01
26-07-2003	"		01
28-07-2003	"		01
29-07-2003	"		01
30-07-2003	"		01
3236m\68-81			
31-07-2003	"		01
1-08-2003	"		01
2-08-2003	"		01
3-08-2003	"		01
4-08-2003	"		01
5-08-2003	"		01
6-08-2003	"		01
7-08-2003	"		01
8-08-2003	"		01
9-08-2003	"		01
11-08-2003	"		01
12-08-2003	"		01
13-08-2003	"		01
14-08-2003	"		01
16-08-2003	"		01
18-08-2003	"		01
19-08-2003	"		01
20-08-2003	"		01
21-08-2003	"		01
22-08-2003	"		01
23-08-2003	"		01
25-08-2003	"		01
26-08-2003	"		01
27-08-2003	"		01
28-08-2003	"		01
29-08-2003	"		01
30-08-2003	"		01
1-09-2003	"		01
2-09-2003	"		01
3-09-2003	"		01
4-09-2003	"		01
5-09-2003	P&L		01
6-09-2003	"		01
7-09-2003	"		01
8-09-2003	"		01
9-09-2003	"		01
10-09-2003	"		01
11-09-2003	"		01
12-09-2003	"		01
13-09-2003	"		01
15-09-2003	"		01
16-09-2003	"		01
17-09-2003	"		01
18-09-2003	"		01
19-09-2003	"		01
20-09-2003	"		01
22-09-2003	"		01
23-09-2003	"		01
24-09-2003	"		01
26-09-2003	"		01
27-09-2003	"		01
29-09-2003	"		01
1-10-2003	"		01
3-10-2003	"		01
6-10-2003	"		01
7-10-2003	"		01
8-10-2003	"		01
9-10-2003	"		01
10-10-2003	"		01
11-10-2003	"		01
13-10-2003	"		01
14-10-2003	"		01
15-10-2003	"		01
16-10-2003	"		01
17-10-2003	"		01
18-10-2003	"		01
20-10-2003	"		01
21-10-2003	"		01
22-10-2003	"		01
23-10-2003	"		01

(1)	(2)	(3)	(4)
24-10-2003	P&L		01
25-10-2003	"		01
27-10-2003	"		01
28-10-2003	"		01
29-10-2003	"		01
30-10-2003	"		01
31-10-2003	"		01
3-11-2003	"		01
4-11-2003	"		01
5-11-2003	"		01
6-11-2003	"		01
7-11-2003	"		01
8-11-2003	"		01
10-11-2003	"		01
11-11-2003	"		01
12-11-2003	"		01
13-11-2003	"		01
14-11-2003	"		01
15-11-2003	"		01
17-11-2003	"		01
18-11-2003	"		01
19-11-2003	"		01
20-11-2003	"		01
21-11-2003	"		01
22-11-2003	"		01
24-11-2003	"		01
25-11-2003	"		01
27-11-2003	"		01
28-11-2003	"		01
29-11-2003	"		01
1-12-2003	"		01
2-12-2003	"		01
3-12-2003	"		01
4-12-2003	"		01
5-12-2003	"		01
8-12-2003	"		01
9-12-2003	"		01
10-12-2003	"		01
11-12-2003	"		01
12-12-2003	"		01
13-12-2003	"		01
15-12-2003	P&L		01
16-12-2003	"		01
17-12-2003	"		01
18-12-2003	"		01
19-12-2003	"		01
20-12-2003	"		01
22-12-2003	"		01
23-12-2003	"		01
24-12-2003	"		01
26-12-2003	"		01
27-12-2003	"		01
29-12-2003	"		01
30-12-2003	"		01
31-12-2003	"		01
1-01-2004	"		01
2-01-2004	"		01
3-01-2004	"		01
5-01-2004	"		01
6-01-2004	"		01
7-01-2004	"		01
8-01-2004	"		01
9-01-2004	"		01
10-01-2004	"		01
12-01-2004	"		01
13-01-2004	"		01
14-01-2004	"		01
16-01-2004	"		01
17-01-2004	"		01
18-01-2004	"		01
19-01-2004	"		01
20-01-2004	"		01
21-01-2004	"		01
22-01-2004	"		01
23-01-2004	"		01
24-01-2004	"		01
27-01-2004	"		01
28-01-2004	"		01
29-01-2004	"		01
30-01-2004	"		01
31-01-2004	"		01
3-02-2004	"		01
4-02-2004	"		01
5-02-2004	"		01

6-02-2004	"	01
7-02-2004	"	01

11. From the above extracted portion of the list annexed to Ex.W10 it clearly demonstrates that between 7-02-2003 and 7-2-2004 the days worked under voucher comes to 318- This suggest that excluding the intervening holidays and Sundays from 7-2-2003 to 7-2-2004 continuously his service was availed- In view of these documentary evidence the first party having discharged his burden that in the preceding 12 months to the alleged date of termination he worked for more than 240 days admittedly the provisions of section 25 F having not been complied by the second party contending that he left the work of his own from 7-2-2004 onwards, whether such contention of the second party is acceptable has to be seen. Since according to the second party itself no letter of appointment or termination was given to the first party and the payment was made to him obtaining vouchers for the days he worked, no documentary evidence can be expected from the first party to demostrate that this services were terminated w.e.f. 7-2-2004 and only circumstances has to be taken into account- In view of the admission of MW1 that in the year 1997 Sri E. Buddanna who was working as permanent part time Safai Karmachari at Naragel branch resigned on 11-08-1997 and failure of the second party to rebut the version of the first party that the second party suddenly posted Mr. Sridhar from Hubi Extension Counter to report duty at Naragel branch and hence is services were dispense abruptly w.e.f. 7-2-2004 with oral instruction not to come from work from 9-2-2004 which ought to have demonstrated by producing the muster roll of the permanent employees in the Naragel branch. In other words when it is categorically asserted by the first party that second party suddenly posted one Mr. Sridhar S. Mangodi from Hubli Extention Counter to report duty at Naregal branch his services were unceremoniously from 7-02-2004 dispensed with clear oral instruction not come for work from 9-02-2004, no documentary evidence can be expected of him and on the other hand the second party could have rebutted this version by producing the documentary evidence like muster roll to demonstrate the said version being unacceptable. Moreover, the documentary evidence brought on record when do disclose that continuously from 13-12-1997 till 7-2-2004 interminttently the first party worked for a total period of 945 days, the contention that he voluntarily stopped attending the work from 7-2-2004 onwards is highly improbable that too when he immediately applied to the second party bank to provide him work by way of a letter produced at Ex. W8 which is dated 5-04-2004. Under the circumstances the contention of the second party that from 7-2-2004 onwards the first party on his own stopped coming to work is highly improbable whereas the assertion made by the first party that the second party abruptly posting a permanent Safai Karmachari to Naragel branch from 7-2-2004 dispensed with his service appears to be more probable- Under the circumstances I arrived at the conclusion the second party abruptly terminated the services of the first party w-e-f- 7-2-2004 without complying the mandatory requirements of Section 25F of the Industrial Disputes Act ,1947 who had in the preceding 12 months worked for more than 240 days. Therefore, the action of the management of Central Bank of India in terminating the services of Shri S.M. Hungund part time Safai Karmachari without complying the provisions of Section 25F of the Industrial Disputes Act is unjustified and illegal. Since admittedly the services of the first party was availed by the branch manager of the Naregel branch as a part time Safai Karmachari without regular appointment and moreover as already adverted to by me above the schedule to the reference do not give scope to consider the claim regularization of services, he can only be reinstated into panel of part time Safai Karmachari of the Naragel branch of the second party bank and his claim for regularisation has to be rejected for the same reason tht he was only a part time Safai Karmachari to work in the vacant permanent post and admittedly from 7-2-2004 onwards a permanent Safai Karmachari was posted at Naragel branch he cannot be given full back wages that would have been payable to a daily wager/part time Safai Karmachari. If the second party had retained the first party in the panel of its part time Casual workers it could have provided him service whenever the permanent employee goes on leave or remained absent for some reason. The order of termination being contrary to the provisions of Section 25F of the industrial dispute act and unjustified, the first party is deemd to have continued in service as part time Safai Karmachari and is entitle for continuity of such service. As already adverted to by me above, if his services were not illegally terminated w.e.f. 7-2-2004 he would have an opportunity when ever the permanent employee availed leave or remained absent for some reason and for such period he could have get the daily wages. In the absence of any evidence, how many days actually opportunities would have come to first party during this period, having regard to the nature of his service and that he was entitled to daily wages as far as claim of back wages is considered I feel it is just and proper to driect the second party to pay him compensation at the rate of Rs. 1000 per month from 9-2-2004 upto the date of his reinstatement in the services.

12. In the result I have arrived at the conclusion of answering that the action of the second party terminating his services from 7-2-2004 without complying with the provisions of Section 25 of I.D. Act is unjustified and that he is entitle for reinstatement with continuity of service and compensation of Rs. 1000 per month from 9-2-2004 till actually he is reinstated in service by restoring his name in the panel of Casual Labour/Daily Wager of its Naragel branch. Hence I pass the following Award:

AWARD

This reference is allowed holding that the action of the management of Central Bank of India is unjustified in terminating the services of Shri Sharanabasappa Mallappa Hungund, Part time Safai Karmachari without complying with the provisions of section 25F of the Industrial Dispute Act 1947 and he is entitle to be reinstated in such service by restoring his name in the panel of Casual Labour/Daily Wagers of Second Party at Naragel branch with continuity of service and compensation at the rate of Rs.1000/- per month w.e.f. 9.2.2004 (the date of denying the work) till actually his name is restored in the panel of Casual Labours/ Daily Wagers. Under the cicumstances the parties shall have to bear their own costs.

(Dictated to PA transcribed by her corrected and signed by me on 2nd July, 2012)

S.N. NAVALGUND, Presiding Officer

Annexure -CR.No. 06/2005

List of witnesses for the Management/Second party

1. Shri Chidambar Mutaik, Branch Manager — MW1

List of documents marked for the Second Party/ Management

1. Sixty vouchers pertaining tothe first party produced by the second party — Ex. M1 series

List of witnesses for the First Party

1. Shri S.M. Hungund, first party — WW-1
2. Shri Balabati Abdulraiman — WW-2
3. Shri A.I. Balbatti — WW-3

List of documents marked for the First Party

1. Certified copies of letter No. PRS.PTSK/ 01-02/78 dated 14-01-2000 addressed by the Asst. Regional Manager to the District employment office. — Ex. W1
2. Letter No. PRS/PTSK/01-02/78 dated 17-11-2001 written by the branch manager to Regional Officer, Hubli to consider the case of first party favourably. — Ex. W2
3. Letter No. PRS/PTSK/02-03/01 dated 4-07-2002 addressed by the branch manager of Naragel to Regional Office, PRS department forwarding first party's letter for his appointment at PTSK — Ex. W3
4. Letter of the first party dated 22-04-2002 to the Regional Manager of the second party to absorb him as PTSK with scale wages. — Ex. W4
5. Letter No. RO/HUB/OPR/02-03/480 dated 16-08-2002 addressed by the Regional Manager of the second party of Naragel branch pointing out certain irregularities/shortcoming pointed out by the internal audit. — Ex. W5
6. Letter No. PRS/2002-03 dated 6-02-2003 addressed by the Regional Manager to the Branch Manager, Naragel Branch to furnish details of the period for which the first party has been engaged as casual worker since 1-10-2001 in continuation of his letter dated 15-01-2002 — Ex. W6
7. Letter of Branch Manager, Naragel branch to the JRS Department Regional Office, Hubil dated 2-7-2004 highlighting certain facts taken before the ALC, Hubli in the conciliation proceedings — Ex. W7
8. Office copy of the claim petition filed by the first party before te ALC(C), Hubli — Ex. W8
9. Xerox copy of the proceedings before the ALC, Hubli — Ex. W9
10. Certified copy of the letter given by the First Party to the ALC, Hubli along with list of vouchers. — Ex. W10
11. Conciliation failure report — Ex. W11
12. The calcuation sheet prepared by the first party showing the number of days worked by him — Ex. W12
13. Xerox copy of the notificaiton issued by the Govt. of India, Ministry of Finance dated 6-08-1990 — Ex. WE13
14. Notarised copies of Voter ID of WW2 — Ex.W14
15. Pass book of his SB Account at Naragel Branch — Ex.W15
16. Notarised copies of Voter ID of WW3 — Ex.W16
17. Pass book of his SB Account at Naragel Branch — Ex.W17

नई दिल्ली, 27 अगस्त, 2012

का. आ. 2990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एंड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 114/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-08-2012 को प्राप्त हुआ था।

[सं॰ एल-12012/382/97-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2990.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2011) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab & Sind Bank and their workman, which was received by the Central Government on 14.08.2012.

[No. L-12012/382/97-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No.114/2011

Shri Sanjay Kumar Joshi,
S/o Motilal Joshi,
Near Dudhiya Mandir, Paharganj,
Kichna Rudrapur, Dist. Nainital,
U.P.

...Workman

Versus

The Regional Manager,
Punjab & Sind Bank,
Regional Offices, 148,
Civil Lines,
Bareilly, U.P.-243 001.

...Management

AWARD

A daily wager was engaged by Punjab and Sind Bank (in short the bank) at its Rudrapur branch in August 1992, as per exigencies. Often and then, he was also assigned with the job of getting certain documents photocopied. His services were not taken after September 1994. Feeling aggrieved by that act of the bank, the said daily wager sent notice of demand on 9-12-1994 seeking reinstatement in service of the bank. Another letter was sent by him in February 1995. Lastly, he wrote to the bank on 9-12-1996. When his communications were not responded to, he raised a dispute before the Conciliation Officer. Bank resisted his claim, hence conciliation proceedings ended into failure. On consideration of the failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/382/97-1R(B-II), New Delhi dated 26-2-1998, with the following terms:

> "Whether the action of the management of Punjab & Sind Bank in terminating the services of Shri Sanjay Kumar, ex-temporary peon with effect from 16-9-1994 is legal and justified? If not, to what relief the said workman is entitled to and from which date?

2. Claim statement was filled by the said daily wager, namely, Shri Sanjay Kumar pleading that he was taken in its employment by the bank at its Rudrapur branch on 3-8-1992. Work of peon was taken from him. At the time of his engagement, his eligibility and suitability for the post of peon was ascertained by the Branch Manager. He was required to work full time as a member of subordinate staff. Though he worked full time, yet the bank took undue advantage of his unemployment and weak bargaining strength and paid him at the rate of daily wager, instead of giving him scale wages for the post of peon. Neither appointment letter was issued nor he was allowed to mark his attendance.

3. Claimant asserts that indoor as well as outdoor duties were performed by him, besides serving drinking water to the members of staff. He was assigned duties of delivery of dak to local parties, constituents of the bank and local banks etc. He agitates that this fact can be verified out of the records of Rudrapur branch. According to him, he rendered continuous service as office peon for a period of two years. At that juncture, he verbally asked the Branch Manager to regularize his services. This fact annoyed the Branch Manager, who told him not to attend duties thereafter. His services were abruptly and arbitrarily terminated on 16-09-2012, in an illegal manner. He served notice of demand to the bank on 09-12-1994, followed by legal notice dated 22-02-1995. Since he fell ill, hence another letter was sent by him after considerable gap on 09-12-1996, which was addressed to the Regional Manager of the bank. He agitates that since work of permanent nature was taken from him, the bank cannot treat him as temporary employee. He places reliance on Clause 20.8 of the Bipartite Settlement dated 16-10-1966 and claims that he was entitled to be confirmed after completing 6 months in service. According to him, artificial breaks were given by the bank in his engagement. He projects that neither notice nor pay in lieu thereof was given to him. Retrenchment compensation was also not paid, which act makes action of the bank violative of the provisions of Section 25F of the Industrial Disputes Act, 1947 (in short the Act). According to him, bank violated provisions of rules 76, 76A, 77 and 78 of the Industrial Disputes (Central) Rules, 1957 (in short the Rules). He projects that no notice of retrenchment was given to him as per rules 76 and 76A nor he was re-employed in consonance with rule 78 of the Rules. He claims that this Tribunal may be pleased to pass an award directing the bank to reinstate him in service with continuity and full back wages.

4. Claim was resisted by the bank pleading that the claimant was not engaged at any point of time, hence there existed no relationship of employer and employee between the parties. Claimant used to collect documents from the bank for getting it photocopied and thereafter deliver it to the bank. He was never assigned any kind of work of office peon. In the alternative, bank pleads that the claimant was engaged for casual jobs, which fact would not make him a regular employee. Since he was not in employment of the bank, there was no question of paying him wages of sub-staff or entering his name in the attendance register. It has been denied that the claimant rendered continuous service with the bank for a period of two years. Bank projects that provisions of Clause 20.8 of the Bipartite Settlement dated 19-10-1966 nowhere comes to his rescue. There was no question of given artificial breaks in his engagement since the claimant was never engaged. The claimant, who was working as attendant

with some photocopier shop, was entrusted with the job of getting documents photocopied.

5. Since the claimant was not in the service of the bank, no question arises for rendering continuous service for a period of one year, as defined by Section 25B of the Act, pleads the bank. There was no occasion for the bank to terminate his services or to give him one months' notice or pay in lieu thereof. There was no question of making payment of retrenchment compensation. Requirements of fulfilling rule 76, 76A and 78 of the Rules does not arise. There is no case in favour of the claimant. His claim may be discarded and an award may be passed in favour of the bank, pleads the bank.

6. In rejoinder, the claimant reiterates the facts pleaded by him in his claim statement.

7. Vide order No.22019/6/2007-IR(C-II), New Delhi dated 11-02-2008, the case was transferred to Central Government Industrial Tribunal No.2, New Delhi, by the appropriate Government for adjudication. The case was re-transferred to this Tribunal, vide order No. L-12012/382/97-IR(B-II), New Delhi dated 30-03-2011, by the appropriate Government for adjudication.

8. Claimant entered the witness box to testify facts. Shri Pyara Singh, Senior Manager, unfolded facts on behalf of the bank. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. Shri Satish Kumar Sharma, authorised representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorized representative, presented facts on behalf of the bank. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

10. Claimant deposes that he joined Rudrapur branch of the bank on 03-08-1992, through a peon posted there. Shri R.C. Grover, Branch Manager, appointed him on the post of peon. However, no appointment letter was given to him. He used to visit other branches of the banks, deliver dak and his signatures appear in the peon book, in that regard. Photocopy of the peon book (containing 7 pages) is Ex.WW1/1. A sum of Rs.1000.00 per month was being paid as wages to him through vouchers. During the course of his cross-examination, he concedes that no advertisement for that post of peon was given by the bank. According to him, he was the only person who was interviewed for the post. He, further, concedes that he used to get documents of the bank photocopied for which he was paid. He nowhere disputes copy of award dated 26-11-1996, which is Ex.WW1/M1.

11. Shri Pyara Singh swears in his affidavit Ex.MW1/A, tendered as evidence, that the claimant was not an employee of the bank. He was only assigned job of getting photostat copies made and paid for it through vouchers. No payment of any wages was ever made to the claimant.

12. When facts unfolded by the claimant and Shri Pyara Singh are appreciated, it came to light that no vacancy for post of peon was ever advertised by the bank. It is also obvious that the bank had not requisitioned names of eligible candidates from employment exchange for appointment as peon in its Rudrapur branch. It also emerges that no notice was displayed by the bank, inviting applications for post of peon from public at large. Thus, it is evident that procedure for recruitment for post of peon was not followed. Claimant simply asserts that he went to Rudrapur branch, alongwith a peon posted there. He was interviewed by Shri R.C. Grover, Branch Manager, and appointed as peon. However, he concedes that neither an appointment letter was given to him nor he was ever allowed to sign in the attendance register, meant for employees of the bank. All these facts make it clear that the claimant had not been able to project that he was engaged as peon by the bank.

13. To substantiate his claim, the claimant had proved photocopies of peon book, as Ex.WW1/1. Shri Pyara Singh, showed his ignorance to identify signatures or writing of Ex.WW1/1, claiming that he was not posted there in the branch at the relevant point of time. Peon book for the relevant period was not produced by the bank, claiming that it stood destroyed. In view of these facts, I am constrained to accept Ex.WW.1/1 as a piece of evidence. On scrutiny, contents of Ex.WW/1 project that signatures of the claimant do appear in the document for various dates. Dates against which signatures of the claimant appears are 08-08-92, 28-08-92, 01-09-92, 31-12-92, 01-01-93, 05-01-93, 08-07-93, 09-07-93, 24-07-93, 27-07-93, 30-07-93, 04-01-94, 05-01-04, 12-01-94, 11-02-94 and 01-09-1994. Out of contents of Ex.WW1/1 it creep over the record that the claimant delivered dak of the bank to local parties, constituents of the bank and local banks etc. His signatures do appear in the column meant for peon. As referred above, the claimant was not appointed as peon in the bank. Therefore, natural corollary flows, out of these facts, that often and then services of the claimant were taken by the bank as a casual daily wager, in exigencies. It does not lie in the mouth of the bank that there never existed relationship of employer and employee between the parties. Though there was relationship of employer and employee between the parties, yet it is not emerging over record that the claimant was engaged as a regular employee.

14. Claimant could bring over the record that he was engaged by the bank for casual jobs. To establish that fact, he obtained photocopy of peon book as and when he was sent with dak to other branches of the banks or constituents of the bank. It is evident that from the very beginning, claimant was conscious to collect evidence to the effect

that he was engaged by the bank as a casual employee. He was not a novice. He was well aware that in case he is able to render continuous service for a period of 240 days, then he may get protection of the provisions of section 25F of the Act. This proposition emerges out of the fact that at earlier point of time, he had raised an industrial dispute against Central Bank of India, projecting therein that he was working with that bank continuously from 24-03-1989 to 14-12-1991. He attempted to seek reinstatement in the said bank, which attempt was foiled by that bank. Therefore, when the claimant was engaged for casual jobs by the bank, he left no chance to collect evidence to the effect that he rendered casual jobs with the bank. His sincere efforts in that regard could project that he was assigned work of delivery of dak by the bank only for 16 days.

15. On scrutiny, contents of Ex.WW1/1 make it clear that the claimant was engaged at intervals. His engagement in August' 92, may show that he worked for a few days in that month as well as for a few days in September' 92. Thereafter he worked in December' 92 and January' 93 for a few days. Next spell of his engagement was in July' 93. He was further engaged in January and February' 94 and lastly engaged in September' 94. His engagement at different intervals by the bank is not a disputed fact. In his claim statement, the claimant presents that there were artificial breaks in his service. Taking into account all these aspects, I am of the considered view that the claimant has not been able even to probablise the proposition that he worked with the bank for a considerable long period.

16. "Continuous Service" has been defined by section 25B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

17. Could the claimant establish that he continuously worked with bank for a period of 240 days? As detailed above, except Ex.WW1/1 no other document has been pressed in service by the claimant. Claimant is a person who leaves no chance to collect evidence to show that he worked with the bank on a particular day. He is also aware that in case he completes one year continuous service, even by use of legal fiction, he would get protection of section 25F of the Act. If such an intelligent employee is to collect evidence, he will leave no stone unturned in that regard. He would make every endeavour to collect all evidences, if any. When no other documentary evidence is produced, it would be taken to mean that there was none other than Ex.WW1/1. Ocular facts, detailed by the claimant, are self serving. Hence no weight can be given to it, without being corroborated from any other place of evidence, direct or circumstantial. Considering all these facts, self serving words are not given any weight. Taking into account all evidence brought over the record, it is concluded that the claimant has not been able to establish that he has been in continuous services for not less than one year, to claim protection under section 25F of the Act. Section 25F of the Act stipulates some conditions precedent for retrenchment of an employee, who had rendered continuous service of one year, as contemplated by section 25B of the Act. When the claimant had not rendered continuous service of one year to become eligible for protection under section 25F of the Act, he cannot expect the bank to give one months' notice or pay in lieu thereof to him. His right to get retrenchment compensation nowhere has been established. Under these circumstances, it cannot be agitated by the claimant that termination of his service by the bank was violative of the provisions of section 25F of the Act.

18. In his testimony, the claimant feigned ignorance of the fact as to whether any junior to him was retained in service by the bank when he was bade farewell. His testimony gives inference that there was no junior to him when the claimant was engaged as daily wager, in exigencies. In such a situation, provision of section 25G of the Act nowhere comes in operation. No evidence is also there on the count that at subsequent period, bank was in need of engaging a daily wager in exigencies. Therefore, no obligation accrued on the bank to given an opportunity to the claimant for his re-employment in terms of section 25H of the Act.

19. There is other facet of the coin. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were

considered and the Court declined the submissions of the workmen to be made permanent on the posts which were held by them in temporary or ad- hoc capacity for a fairly long spell. The Court ruled thus:

> "With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insists on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent- distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh [1992(4) SCC 118] is to some extent inconsistent with the conclusion in para 45 of the said judgement therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

20. In P. Chandra Shekhara Rao and Others (2006 7 SCC 488) the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh (2006 5 SCC 493) the Apex Court ruled that appointment made without following due procedure cannot be regularized. In Indian Drugs & Pharmaceuticals Ltd. [2007 (1) SCC 408] the Apex Court reiterated the law and announced that the rules of recruitment cannot be relaxed and Court cannot direct regularisation of temporary employees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad-hoc or daily rated employee) or payment of regular salaries to them

21. In Uma Devi (supra) it was laid that when a person enters a temporary employment or get engagement as contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequence of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed for the post when an appointment to the post could be made only by following a proper procedure or selection in many cases, in consultation with the public service commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek relief of being made permanent in the post. In view of those precedents neither continuance nor regularisation of services of the claimants can be ordered, since it would amount to back door entry into Government job.

22. Therefore casual engagement of the claimant, dehors the rules, would not confer any right in his favour for continuance in service. Reasons detailed above, make it clear that the claim put forward by Shri Sanjay Kumar is not maintainable. His claim is accordingly brushed aside, since he is not entitled to any relief. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated : 7-8-2012 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 27 अगस्त, 2012

का. आ. 2991.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए/19/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-08-2012 को प्राप्त हुआ था ।

[सं. एल-12011/174/2005-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGITA/19/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 13-08-2012.

[No. L-12011/174/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :
Binay Kumar Sinha,
Presiding Officer,
CGIT-cum-Labour Court,
Ahmedabad,
Dated the 31st July, 2012

Reference : CGITA of 19/2006

The Assistant General Manager,
Bank of India, Zonal Office,
Bhadra, Ahmedabad,
Gujarat .....First Party

And their workman,
V.M.S. Menon,
At present Residing At,
B/5/2, Mayur Deep Apartment,
Nr. Don Bosko English School,
Jivraj Park, Ahmedabad-380051. .....Second Party

For the first party : Smt. Meenaben Shah, Advocate

For the second party : Shri H.K. Acharya, Advocate

AWARD

As per order New Delhi, dated 15-02-2006 Appropriate Government, Government of India, Ministry of Labour by notification No. L-12011/174/2005-IR (B-II) under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the I.D. Act, 1947, referred the dispute for adjudication to this tribunal formulating the terms of reference under the schedule as follows:—

SCHEDULE

"Whether the action of the management of Bank of India in imposing the punishment of compulsory retirement vide order dated 08-06-2004 on Shri V.M.S. Menon from the post of Computer Terminal Operator from the Manek Chowk Branch, Ahmedabad, is legal and justified? If not, what relief the workman is entitled to and from what extent?"

2. After registering of the case the notices to the parties were sent and consequent upon notice the second party workman and the first party Bank (management of Bank of India) appeared in this case and filed respective pleadings-statement of claim and written statement.

3. The case of the second party workman as per statement of claim at Ext. 5 is that he joined services of the Bank in the year 1973 and lastly he was working as Computer Terminal Operator at Manek Chowk branch of the first party Bank. During his entire service in the bank, he was discharging his duties sincerely, honestly and without giving any cause of complaint as regards his work, conduct and attendance. On 12-03-2004, as the computer was getting hung on account of installation of new version a day before, he was not in a position to print the Advice of Drawings, and therefore he was waiting for the help of the officials at the branch. But instead of helping him out, the concerned officer alleged against him of not working and whiling away time. From the dump report being taken out to see who has worked how much, it would be observed that the workman was continuously working on the computer and therefore it cannot be said that he was having casual approach towards the duties assigned to him. On the basis of said complaint lodged by Mr. Varma a chargesheet dated 30th April, 2004 was issued to him. However, Chief Manager (CS), Bank of India, Ahmedabad zone and Disciplinary Authority, without considering the documents on record of the departmental enquiry, concluded the workman's such admission of reading newspaper after completing the work as his casual approach towards his duties and without considering the fact that there was chaos for the problem of computer getting hung on account of new version, passed punishment order dated 08-06-2004 imposing the punishment of "Compulsory Retirement" from the bank's service. He had preferred appeal before the appellate authority of the first party Bank which was also rejected without assigning any reasons. Further case is that the action of the Disciplinary Authority in imposing harsh punishment as well as Appellate Authority is confirming without application of mind and the same is nothing but high-harded action on the part of the Disciplinary Authority as well as Appellate Authority, against him (second party workman). Further case is that there is no past record of any kind of misbehaviour against the second party workman during his 30 years of service. Even then disciplinary authority has imposed the extreme punishment of compulsory retirement from service for this solitary incidence in his tenure of 30 years in the bank. Even he had apologized before the concerned officers including Manager, Manek Chowk Branch and the General Manager (HRD), Head Office and also before the Disciplinary Authority and Appellate Authority. But in a pre-determined manner, all the authorities did not consider the same and taken decision to impose upon him the extreme punishment of compulsory retirement from the Bank's service. Further case is that his whole family consisting of two marriageable aged daughters and a mentally retarded son, would be ruined on account of the punishment of compulsory retirement for the charges of misbehaviour admitted by him with due respect to the concerned official. But even the representation of the second party was not considered on humanitarian grounds. Further case is that the action in imposing punishment by the Disciplinary Authority and confirming the punishment by the Appellate Authority is only high-handed action and also inhuman. On these scores prayer has been made to set aside punishment order of his

compulsory retirement dated 08-06-2004 and for his reinstatement to his original post with continuity of service and with full back wages.

4. As against this the contention of the first party Bank in its written statement Ext. 8 pleading inter-allia is that the workman was working as Computer Terminal Operator at Manek Chowk Branch of the Bank on 12-03-2004. On that day Shri Rakesh Verma, Staff Officer and Shri Ranjit Singh, Computer Operator made a complaint about the incident of misbehaviour on the part of the second party workman then a suspension order dated 15-03-2004 was issued by the Bank Management upon the concerned workman Mr. Menon followed by chargesheet dated 25-03-2004 for his acts of misconduct and disorderly behaviour with the officers during the course of his duties Shri S.B.Morlidhar, Staff Officer, Shahibaug branch was appointed as enquiry officer to enquire into the charges framed against the second party workman and Shri B.P. Gandhi, Staff Officer, Zonal Office was appointed as Presenting Officer. Further contention is that during enquiry when the enquiry officer asked the second party workman whether he admits/ accepts the charges the second party workman accepted in writing the charges by letter dated 05-04-2004 such acceptance of charge by the workman was voluntary and unconditional and the same was taken on record marked as DE-1 Shri Girish Dave, General Secretary, Bank of India, Staff Union, Ahmedabad was appointed as defence representative of the workman. The presenting officer submitted list of documents to be taken on record to which the defence representative objected for taking on record, on the ground that the charges were admitted by the second party workman voluntary and unconditionally. However enquiry Officer rejected such objection of defence representative and accepted the documents submitted by the Presenting officer which were marked ME-1 to ME-10. Further contention is that the delinquent workman since admitted the charge so the enquiry concluded on the basis of acceptance of the charges by the delinquent workman. Further case is that the Disciplinary Authority carefully going through the report of the enquiry officer along with records of the enquiry passed the punishment order which is not harsh punishment since having with superannunation benefit and pension/provident fund and gratuity were provided to the delinquent workman without disqualification from future employment. Further contention is that since misconduct was of serious nature and so the Appellate Authority after giving opportunity of being heard to the delinquent workman rejected his appeal. Further contention is that the workman had admitted the charges levelled against him voluntary and unconditionally and so the enquiry officer on the basis of his such admission of charge incorporated in the enquiry report that the charges are proved and that the workman was supplied with a copy of enquiry report along with show cause punishment notice dated 30-04-2004 from the Disciplinary Authority and the principle of natural justice was followed by the Disciplinary Authority. It has been denied that the past record of the delinquent workman was clean. It has been contended that the delinquent workman had been issued punishment orders earlier too. On these grounds prayer is made to reject the reference since the workman is not entitled to relief.

5. At Ext. 25 the second party workman filed pursis admitting legality of the procedure of departmental enquiry conducted against him by the first party so the propriety or otherwise of the domestic enquiry is not issue rather the same has been admitted. However the second party workman has challenged validity of the punishment imposed upon him on the ground that the same is harsh and inhuman and has caused economical death.

6. In view of such situation arising out from the pleadings- statement of claim and W.S. at Ext. 5 and 8 and also pursis at Ext. 25 admitting the legality of the procedure of the departmental enquiry, the following issues are taken up for decision.

ISSUES

(i) Whether the reference is maintainable?

(ii) Has the second party workman valid cause of action to raise the Industrial Dispute?

(iii) Whether the order of punishment dated 08-06-2004 is, harsh and shockingly disproportionate to the gravity of the charge?

(iv) Whether the 2nd party (workman) is entitled to relief as claimed?

(v) What orders are to be passed?

FINDINGS

(7) ISSUE NO. III

The first party has relied upon its case in support of the punishment imposed upon the delinquent workman on the documents in the enquiry files. The first party produced 14 documents through a list Ext. 10 on 10-09-2007. Ext. 13 to 24 are pacca Ext to 12 documents Ext. 10/7 is copy of findings of the enquiry officer dated 06-04-2004 and Ext. 10/11 which is copy of punishment order issued by the Disciplinary Authority dated 08-06-2004 for which 2nd party endorsed objection as to marking Ext. But for other 12 documents no objection has been incorporated on behalf of the second party workman. Accordingly pakka Exhibits 13 to 24 given to the remaining 12 documents. Ext. 13 is the copy of suspension order of the delinquent workman dated 15-03-2004. Ext. 14 is the copy of memorandum given to the workman dated 25-03-2004. Ext. 15 is the copy of the chargesheet issued to the workman dated 25-03-2004. Ext. 16 is the copy of the appointment of enquiry officer dated 25-03-2004 Ext. 17 is the appointment of resenting Officer dated 25-3-2004 Ext. 18 is the enquiry proceedings along with documentary evidence submitted by the parties during the departmental enquiry. Ext. 19 is the copy of second

show caused notice issued to the workman dated 30-04-2004 along with the copy of findings of the enquiry officer. Ext. 20 is the reply of the workman dated 10-05-2004 to the second show cause notice. Ext. 21 is the copy of minutes of the personal hearing dated 10-05-2004 in pursuance to the second show cause notice issued to the workman. Ext. 22 is the copy of appeal filed by workman dated 24-06-2004. Ext. 23 is the copy of minutes of personal hearing along with submission report dated 07-07-2004 in pursuance to the appeal filed by the workman. Ext. 24 is the copy of order of Appellate Authority dated 30-11-2004 rejecting the appeal of the workman. The first party has not lead any oral evidence on point of legality of the departmental enquiry as per its pursis at Ext. 27 in view of admitting the legality and propriety of the departmental enquiry by the delinquent workman. The pursis at Ext. 27 was filed on behalf of the first party in view of filing of the pursis at Ext. 25 by the delinquent workman second party admitting the legality and procedure of the departmental enquiry.

8. The second party workman V.M.S. Menon aged 59 filed his affidavit in lieu of oral examination-in-chief at Ext. 26 and its copy received by Smt. Meena Shah, Advocate for the first party Bank. His evidence through affidavit is to the effect that he was working as Typist since 1973 initially at Ahmedabad branch and lastly he was working as Computer Terminal Operator at Manek Chowk branch and he was working with the first party Bank since last 31 years. According to him the management of Bank of India had not issued any memo/show cause notice with chargesheet to him on earlier occasion except the chargesheet given to him dated 25-03-2004. According to him his service record was clean and blotless and there was no any adverse remarks against him. He further stated vide para 2 that the Bank issued suspension order dated 15-03-2004, the incident occurred on 12-03-2004 at Manek Chowk Ahmedabad branch and that chargesheet was also issued to him on 25-03-2004 regarding his alleged misconduct committed on 12-03-2004. His further evidence is that he had not committed any misconduct of riotous and disorderly behaviour with the officers of the first party Bank at Manek Chowk branch during course of his duty on 12-03-2004. He further stated at para 3 of his affidavit that he admitted the charge levelled against him before the enquiry officer due to assurance given of General Secretary the Bank of India Staff Union that no action will be taken against him. However diverting from the pursis at Ext. 25 admitting the legality of the enquiry procedure he states that has not committed any misconduct as alleged in chargesheet dated 25-03-2004. Vide para 4 he challenged the enquiry report on the ground that is is not as per the record of the enquiry procedure as well as it is bias and illogical. he further challenged the punishment order on the gound that the same is illegal and is also harsh punishment because the charges levelled against him are not too serious. Vide para 6 he deposed that presently he is unemployed and he had tried to get the job at different places but could not get. His family is maintained by his working daughter and earlier it was maintained by his wife who was doing job. He was cross-examined by the lawyer of the first party. He deposed vide para 7 that he is now aged 59 years and the age of superannuation of bank staff is at the age of 60. Vide para 8 he admitted during cross-examination that departmental enquiry was duly conducted against him for the incident of 12-03-2004 and that he has gone through the entire enquiry papers up to the stage of order passed by the appellate authority. He also admitted that he had replied to the second show cause notice. He admitted that Mr. J.P. Dave, General Secretary Bank union was his defence representative during domestic enquiry. He vide para 9 denied to such suggestion of the first party stating that it is not a fact that on the earlier occasion too the management of Bank had issued a warning and censure against him for the earlier misconduct vide para 10 he admitted the enquiry papers at Ext. 16, the order of appointment of enquiry officer he also admitted show cause punishment at Ext. 20. He also admitted as to his reply at Ext. 20 to the show cause notice. He also admitted that he did not make any complaint against General Secretary Mr. Dave to whom he had kept as his defence representative. Vide para 11 he deposed that he was overage so could not get job elsewhere. It was suggested to him that since he was heart patient so he was not able for job elsewhere to which he stated that it is not a fact. Vide para 12 he admitted that he is being maintained by his daughter who is in job. The first party as per Ext. 29 files pursis that the first party does not desire to lead oral evidence on point of gainful employment of the delinquent workman.

(9) From perusal of Ext. 18 which is proceeding of the departmental enquiry held against the delinquent workman Shri V.M.S Menon dated 5-04-2004 go to show that on the first day of the domestic enquiry when the enquiry officer asked the chargesheeted employee whether he has received chargesheet and whether he admits/accepts the charges then the chargesheeted employee V.M.S. Menon accepted that he has received chargesheet and also admitted the charges levelled against him. As per acceptance of chargesheet dated 25-03-2004, the voluntarily and unconditionally acceptance of this fact has been incorporated in the proceeding sheet dated 05-04-2004. There is also letter in the pen and signature of the delinquent workman dated 05-04-2004. Ext. DE-1 submitted before the Chief Manager, Ahmedabad Zone through enquiry officer through which delinquent workman admitted the charge voluntarily and unconditionally requesting to take lenient view against him in the matter. This voluntary and unconditional letter regarding acceptance of charge was submitted by the delinquent workman on the first day of the enquiry proceeding at the time of questioning him about admitting or denying to the charges levelled against him. On that day the Presenting Officer also submitted 10 documents with list before the

enquiry officer marked as M.E-1 to M.E-10 which are the copy of chargesheet dated 25-03-2004 copy of appointment of Presenting Officer dated 25-03-2004, copy statement dated 23-03-2004 of the complainant Shri R.K. Varma Staff Officer, Manek Chowk branch, copy of statement dated 23-03-2004 of Shri Rana Ranjit Singh staff officer Manek Chowk branch, copy of statement dated 23-03-2004 of Shri Umesh Chinubhai Shah, Staff Clerk Manek Chowk Branch, copy of statement dated 23-03-2004 of Shri Menon staff computer operator (chargesheeted employee) Manek Chowk branch, Copy of Manek Chowk branch IOM dated 13-03-2004, copy of letter of complaint from Shri Rakesh Verma dated 13-03-2004, copy of dump report dated 12-03-2004 work done by Shri V-M.S. Menon. From going through this annexure which is part of Ext. 18 not objected on behalf of the second party workman as per endorsement made on the list Ext. 10 on 26-12-2010 it appears that for the incident and misconduct on 12-03-2004 happened in the Manek Chowk branch of Bank of India, the staff office Shri Varma had made written complainant and other staff officers and staffs had also submitted their statement regarding incident supporting complain of Shri Varma and supporting the serious misconduct of Mr. Menon (the delinquent workman). From Annexure-4 ME-7 it is attached with Ext. 18 it appears that on 23-03-2004 the delinquent workman Mr. Menon had also given his statement in writing accepting the misconduct committed by him against Mr. Varma, Mr. Rana and had sought for appology for his misdeeds/such misconduct not be repeated in future. He stated in his admission that due to hyper tension he lost temper and used unparliamentary language in terrorizing tone. He also incorporated in his statement that this submission is being given by him of his freewill. It appears that prior to issuing chargsheet dated 25-03-2004 he voluntarily gave statement in writing during preliminary inquiry accepting his misconduct as alleged in the complaint of Mr. R. Varma Staff Officer in presence of Mr. Ranjit Singh Staff officer. Further when the departmental enquiry started in view of issuance of chargesheet against the second party workman dated 25-03-2004, the delinquent workman again voluntarily and unconditionally admitted to the charges leveled against him. The charges against the delinquent workman as per chargesheet Ext. 15 dated 25-03-2004 is that on 12-03-2004 at about 4.55 p.m Shri Varma staff officer asked you to print advice of drawing but you were reading newspaper and you refused to print the same saying that the printer is getting hung and advice of drawing will not be printed and that when Shri Varma insisted he should perform the same and said that you have time to read the newspaper but you have no time to do Bank' work. Upon this you lost your temperament and started saying in loud and shouting tone in Hindi "Dusrose advice nahi nikalva sakte ho? Main nahi nikalunga. Aap jo chahe karlo. Main ja raha hun when Mr. Varma insisted you to do work and you cannot leave the branch without completing the work as it is only 5 p.m. then in threatening language you told in loud/shouting tone "Tum dono officer bahar chalo main tumhe batata hun" and this he threw newspaper at Shri Varma then you further said in bad language "Tum dono bahar chalo. Tum dono ko main bahar marunga". Para 2 of the chargesheet further go to show that your aforesaid riotously and disorderly behavior against staff officer Shri Varma and Shri Rana committed by you in the premises of the Bank amount to gross misconduct in terms of clause 5 (C) of the memorandum of settlement dated 10-04-2002".

(10) I have gone through the entire enquiry papers which is admitted by the delinquent workman. Though the second party workman claim that he has not committed any misconduct on 12-03-2004 in the Manek Chowk branch but his such submission appear to be after thought as per his evidence at Ext. 26 because earlier he had admitted the legality of procedure of departmental enquiry conducted against him as per Ext. 25 the misconduct committed by the delinquent workman in the Manek Chowk branch was in the duty hour of the bank and the second party workman being a bank staff was required to do his duty by staying on his table as computer data operator and not to read newspaper on such flimsy grounds that the computer is being hung and using unparliamentary verbal words/ sentence disobeying the instruction and direction of the staff officer Shri Varma used unparliamentary languages in shouting voices and refusing to do his duty and also trying to charge Mr. Varma by throwing newspaper on him and showing in-subordination on his part which go to prove his serious and riotous misconduct in the Branch at Manek Chowk.

(11) The learned counsel for the second party workman has simply argued that since the delinquent workman had admitted to the charges and he also apologized for his misdeeds not to repeat such misconduct in future and so in such view of the matter the order of punishment dated 08-08-2004 passed by the disciplinary authority is harsh and excessive and also disproportionate to the gravity of misconduct and so such punishment order is fit to be interfered by this tribunal under section 11(A) of the ID Act, 1947. On the other hand the learned counsel for the first party vehemently argued that misconducts committee by the delinquent workman on 12-03-2004 during duty hour in the Manek Chowk branch has been proved during enquiry since the delinquent workman voluntarily and unconditionally accepted all the charges. It has been argued that it is gross misconduct on part of the delinquent workman in terms of clause 5 (C) of the memorandum of settlement dated 10-04-2002 which attracts imposing of punishment of dismissal/discharge but the disciplinary authority had taken lenient view in imposing punishment of compulsory retirement with pensionary benefit etc and so no economical death was caused to the second party workman. It has been further argued that the principle of natural justice and fair play had been followed by the disciplinary authority in issuing second show cause punishment notice and giving personal hearing to the

delinquent workman on his show cause and then after considering all the circumstances and also considering that the misconduct committed by the delinquent workman is of serious nature passed the order as to compulsory retirement from services of the Bank with immediate effect with superannuation benefit i.e. pension or provident fund or gratuity. The learned counsel for the first party has relied upon a case law Voltas Limited Allwyn Unit Hyderabad V/s Additional Industrial Tribunal cum Additional Labour Court and other reported in LLR (2) 2012 53 Andra Pradesh High Court wherein their Lordship have held assaulting of superior at a workplace amounts to an act of gross indiscipline hence any lenient view would lead encouraging indiscipline in the industrial establishment. Another case law relied upon is of Biecco Lawrie Ltd. and another and State of West Bengal and another reported in 2009 (IV) LLJ 664 SC wherein it has been held by their Lordship of Apex Court "when there is no violation of principles of natural justice and when the charges against workman are of such nature as would not render dismissal harsh, interference with it will not be justified." On behalf of the first party the case law of Varma L.K. H.M.T. Ltd. and another reported in 2006 (1) LLJ 2006 SC has also been relied upon wherein their Lordship have held that verbal abuse held sufficient for inflicting punishment of dismissal and contention of the appellant regarding quantum of punishment could not be countenanced. On behalf of the second party workman no any case law has been filed to support such contention that if the delinquent workman admitted his misconduct to the charges during enquiry seeking for apology and for taking lenient view the gravity of gross misconduct committed by the delinquent workman can be considered with another angle by interfering with the order of punishment under the provision of section 11 (A) of the ID Act, 1947.

(12) Considering all the aspects of the case and the overwhelming evidence regarding gross misconduct committed by the second party workman together with his unconditional and voluntary acceptance of the charge which was regarding gross misconduct of using abuse language, unparliamentary language, threatening language to the Bank officers and also assaulting him by throwing newspaper on him and shouting at the top of the voice to various officers and staff certainly attracts for inflicting major punishment by the disciplinary authority. But the disciplinary authority itself had taken lenient view in not imposing punishment of discharge/dismissal that might have caused economical death of the delinquent workman, rather the disciplinary authority has passed order of compulsory retirement considering also this aspect that the delinquent completed more than 30 years of service and also considering that in the past he had also been awarded light punishment of warning and censure. So, to my mind the order of punishment of compulsory retirement from the services of Bank with immediate effect and with superannuation benefit is just and proper and does not appear to be disproportionate to the gravity of the misconduct under the charge committed by the delinquent workman. So this issue is decided against the second party workman and in favour of the first party Bank holding that the order of punishment dated 08-06-2004 is legal and justified.

(13) ISSUE No. I & II

In view of the findings given to issue No. III in the foregoing I further find and hold that the reference is not maintainable and the second party workman has no valid cause of action to raise the Industrial Dispute.

(14) ISSUE No. IV & V

In view of the above findings to issue No. I, II and III the second party workman is not entitled for his reinstatement or for any back wages.

This reference is devoid of any merit and so the same is dismissed on contest. However no order as to cost.

This is my award

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 27 अगस्त, 2012

का.आ. 2992.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 94/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 21-8-2012 को प्राप्त हुआ था।

[सं॰ एल-12011/47/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2011) of the Central Government Industrial Tribunal/Labour Court, CHENNAI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of INDIAN BANK and their workman, which was received by the Central Government on 21-8-2012.

[No. L-12011/47/2011-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 10th August, 2012

President: A.N. JANARDANAN

Presiding Officer

INDUSTRIAL DISPUTE No. 94/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN

The General Secretary . 1st Party/Petitioner Union

Indian Bank Employees

Union No. 6, Moore Street,

Mannady Corner

Chennai-600001

Vs.

The Asstt. General Manager : 2nd Party/
Indian Bank, Circle Office Respondent
359 Dr. Nanjappa Road
Comibatore-641018

Appearance:

For the 1st Party/ : Sri. J. Thomas Jeyaprabhakaran,
Petitioner Union Authorized Representative

For the 2nd Party/ : M/s T.S. Gopalan
Management Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/47/2011-IR(B-II) dated 09-11-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule Mentioned in that order is :

"Whether the action of the Indian Bank Management, Coimbatore in connection with imposing of punishment of reduction in the scale of pay on Sri R. Vaidyanathan vide order dated 18-02-2009 and exonerating the Branch Manager by the Appellate Authority is justified or not? What relief the workman is entitled to?'

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 94/2011 and issued notices to both sides. First party entered appearance through the Authorized Representative and the Second Party through Advocate and filed Claim, Counter and Rejoinder Statement as the case may be.

3. The averments in the Claim Statement briefly read as follows:

Sir R. Vaidyanathan while working as Clerk/Shroff at Sivananda Colony Branch, Coimbatore when was proceeding with Sub-Staff in an Auto Rickshaw along a parallel road to the main route owing to traffic rush and disruption in the main road, en-route they were waylaid by two persons on a two-wheeler. The pillion rider threw chilli powder on the face of the Auto Driver and the Sub-Staff. The Cash Box was kept in between the legs of the two staff at the rear side. The auto was immediately stoppoed. Sensing trouble the Shroff stretched his leg on the suitcase and firmly caught hold of its handle with his right hand. With his left hand he obstructed the robber. Robber inflicted stab injuries with a knife. Despite six stab injuries on his left hand the Shroff stuck to the box. He got a stab on his left waist also. The assailant overpowered him and took the box and fled away. The profusely bleeding Shroff chased him but soon fell unconscious and he was hospitalized. As per Security Department Circular No. PRNL-137/2006-07 dated 16-12-2006 public transport should be preferred where bank's vehicle is not available. As far as possible taxi should be preferred to a three-wheeler scooter and three-wheeler to a cycle rickshaw. Regarding transportation of cash between two branches as a regular feature care should be taken to ensure that a specific pattern with regard to days, dates, timings, routes, frequently, escorts etc. does not emerge. That is to say the above should be changed at regular intervals as frequently as possible. It is the joint responsibility of both the administration and staff to ensure that safe transport of cash is done scrupulously following the corporate guidelines. On being called upon to explain petitioner submitted a reply dated nil. R. Vaidyanathan was charged sheeted on 08-07-2008 for lapses while proceeding on remittance work to the currency chest at Coimbatore Main Branch: He failed to take the cash in a steel box (b) failed to take the cash in a closed vehicle (c) failed to ensure that cash container be chained and locked to the body of the vehicle. (d) not ensured that vehicle was taken through the most frequented busy main road (e) not intimated vehicle registration number to the branch officials. The steel box available at the branch was very heavy and unwidely requiring two persons to carry it and difficult to put into an auto. For a very long period a moulded box had been in use which was purchased by the Branch. Use of old moulded box has not been objected to. Chain was not available at the Branch to chain the box to the body of the vehicle. Branch could not fix a taxi in spite of phone call repeatedly. Only Branch Manager recommended auto. The parallel road as an alternative route, permissible as to avoid a fixed pattern was chosen. The registration number of the vehicle of the petitioner was noted in a piece of paper in the Register at the Chest. Police was also informed while enquiry. But it was omitted to be noted in the Branch register in the hurry burry. Charges (i), (ii) and (iii) while were held proved, (iv) and (v) were held not proved. Disciplinary Authority in the proposal of punishment observed that factum of steel box being big and heavy cannot be accepted in view of HO instructions. That taxi is not available in a prime area is not acceptable and is an afterthrought. Deviation from the procedure and not chaining the container was to have been brought to the notice of the Officer for safe transportation of cash. Plea of traffic jam was an afterthought. The

punishment was communicated under reference dated 8-02-2009. Appeal dated 9-03-2009 was dismissed wrongly stating that all the charges were proved. Unfortunately due to cadre bias though Branch Manager was exonerated the Shroff only was punished. ID raised having failed the reference is caused to be made. Punishment is unjustified and illegal. That the employee with 25 years of experience is expected to take a pro-active step for safe transportation of cash and bring to the notice of the Officer concerned any deviation noticed is not based on facts. The Shroff had no role in hiring an auto. The Sub-Staff on the instructions of the Branch Manager got it. The alternate route is not a deserted one. On differing from the findings of the Enquiring Officer in regard to 4th and 5th Charge, Disciplinary Authority or Appellate Authority did not give any convincing reasons. Appellate Authority did not apply his mind and is erratic. In spite of the Shroff's fight to protect the interests of the bank in the midst of heavy risk involved in the occurrence he has been inflicted harsh punishment. The punishment order is faulty in not having noted the period of reduction and date of restoration in the case of punishment of reduction in stages to those who had already reached in the maximum in the time-sclae in spite of employee's pointing out the same to the Disciplinary Authority. No restoration of the reduced stage has taken place till date. The punishment is to be set aside.

4. Counter Statement averments briefly read as follows:

Cash in transit is most vulnerable. It being beyond safe limit of the branch and exposed to unknown danger of the outside world every employee should strictly adhere to the guidelines of the security management. To any untoward incident happening during transit of the cash from the branch to the currency chest resulting in cash loss, the staff accompanying the cash is answereable irrespective of the circumstances in which the loss is occasioned or the peril which the staff had to face. The instance relates to a robbery of Rs. 13,00,000 in the course of transit for remittance from Sivananda Colony Branch to Coimbatore Main Branch on 18-01-2008 when the cash was carried in a contained other than steel box in auto-rickshaw without the cash box being chained with the body of the vehicle and the concerned Clerk, Vaidyanathan and Sub-Staff, an escort were travelling in the same vehicle. Vaidyanathan had been entrusted with the responsibility of taking the cash of Rs. 13,00,000 for remittance to the currency Chest in Coimbatore Main Branch. He hired an auto-rickshaw and carried the cash in a plastic moulded suitcase with Sub-Staff as escort. The cash box instead of being chained was kept in between the legs of the Clerk and the escort. Pursuant to telephone call about the cash being robbed officials reached the spot and found the Clerk with stab injuries and he was taken to the nearby hospital. Sub-staff also suffered some minor injuries. It was reported that two robbers coming from behind in a two-wheeler after throwing chilli powder in the eyes of the auto driver, clerk and escort snatched the cash box despite the resistance offered by the staff. The robbers escaped with the box and cash of Rs. 13,00,000. The strenuous attempt of the Clerk to prevent the loss would in no way mitigate his omission in no observing the guidelines of security management. The peril was clearly invited by the staff. They rendered themselves for disciplinary action. The culprit could not be traced and bank lost Rs. 13,00,000. Show Cause Notice was issued to the Clerk on 09-06-2008. He denied the allegations. On 08-07-2008 Charge Sheet was issued. Two witnesses were examined for the Management and the Clerk and the Sub-Staff were examined on the defence side. By the enquiry report dated 02-09-2008 charges (i), (ii) and (iii) were held proved. After following the other legal formalities, the impugned punishment was imposed. After disciplinary action against the Branch Manager Mr. Venkatasubramanian and Sub-Staff Mani were also punished. Appeal preferred by the Clerk was dismissed. The accountability for not adhering to the guidelines on the part of the staff cannot be abdicated by saying that the Management alone was responsible. It cannot be said that the available steel box cannot be accommodated in the auto-rickshaw. The Sub-Staff awarded with the same punishment as that of the Clerk acquiesced to the punishment and also retired from service. Incidentally Auto is not a closed vehicle and hence should not be used for cash remittance. It is not admitted that Auto was fixed at the instance of the Branch Manager. It was arranged by the concerned Clerk. It is not uncommon that there were instances where Auto was fixed instead of taxi by the staff taking the cash to the Currency Chest for their personal gain than for any genuine reason. The chain and lock were available in the branch and it was not raised as an issue in the reply of the concerned Clerk. The self-serving statement of DW2 (Sub-Staff Mani) would not advance the case of the concerned Clerk. Punishment being for proved charges (i) to (iii) reference to other charges has not relevance. Punishment cannot be prevented in order to deter other employees from such practice. Punishment for reduction of Basic Pay on reaching the maximum scale is intended to be a permanent punishment. There is no law which says the period of punishment is to be specified. There is no scope for interference with the punishment and the claim is to be rejected.

5. Rejoinder Statement averments in a nutshell are as follows:

In ensuring the guidelines the administration could have made available the required infrastructure, where after the staff requires to be properly impressed upon the need to adhere to the guidelines. Administration had been equally responsible in the affair. Management had fulfilled its obligations at the first instance. Though Branch Manager was punished, in appeal he has been exonerated and let off without any major punishment. Both should have been meted out with identical punishment, if not with graver punishment to the Manager who is with primary

responsibility. Accountability of the Branch Manager also cannot be abdicated. That one has acquiesced to the punishment does not warrant that others should follow it. A quasi-judicial authority in all fairness is expected to act impartially without favoritism and victimization. The three proved charges are only confined for consideration. In fact the Clerk should have been rewarded for his gallantry conduct in the resistance.

6. Points for consideration are:

(i) Whether the punishment of reduction in the scale of pay on Sri R. Vaidyanathan by the Management and exoneration of the Branch Manager by the Appellate Authority are justified or not?

(ii) To what relief the concerned workman is entitled?

7. Evidence consists of Ex.W1 to Ex.W12 marked on consent on the petitioner's side and Ex.M1 to Ex.M23 on the Respondent's side marked on consent with no oral evidence adduced on either side.

Points (i) & (ii)

8. Heard both sides. Perused the records and document. Both sides vehemently argued in terms of their respective case, in terms of pleadings with reference to the documents and records. On behalf of the petitioner it was urged that punishment of the Cashier is a classic case of cadre-wise discrimination in the place of an exemplary reward which was to have been given to him for his gallantry act of resisting the robber. The employees put himself in peril in the encounter by sustaining as much as thirteen injuries. Respondent's learned cousel argued that though lapses are there on the part of the branch also that is not to afford as a defence. The Senior Manager of the Bank and the concerned Shroff together with the Sub-Staff were punished and there is no discrimination. In appeal, Branch Manager was being exonerated. The Sub-Staff did not file an appeal. By the reference what is actually called upon to decide is the propriety of the punishment since the Senior Manager stood exonerated in appeal. Truly on the date of punishment viz 18-02-2009 all were punished. There is no ground to modify the punishment of the Shroff. There is no jurisdiction to interfere with the punishment since Second-11A is not attracted.

9. Reliance was placed on behalf of the Respondent in the various decisions in:

- ZONAL MANAGER, BANK OF INDIA, CHENNAI VS. GENERAL SECRETARY, BANK OF INDIA STAFF UNION, CHENNAI AND ANOTHER (2011-1-LLJ-529) wherein Hon'ble High Court of Madras held "The High Court observed that the punishment was not one of dismissal or discharge of workman. Only in such cases thr Tribunal could invoke its power under Sector-11A of Industrial Disputes Act, 1947. Its attempt to interfere with the penalty was unwarranted, it was held."

- BANGALORE METROPOLITAN TRANSPORT CORPORATION VS. BMTC AND STATE TRANSPORT NOUKARARA SANGHA, BANGALORE (2011-3-LLN-626 (KAR.) wherein High Court of Karnataka held "7. Section-11A of the Act gives power to the Labour Court/Industrial Tribunal to reappraise the evidence adduced in the enquiry and reconsider the decision of the employer in the manner of imposing punishment. The provision under Section-11A of the Act is application only in the case of punishment being dismissal or discharge of a Workman."

10. The concerned workman/Shroff, R. Vaidyanathan was punished by the Disciplinary Authority with a punishment which is not one of dismissal or discharge attracting Section-11 of the ID Act. In a case of that sort re-appreciation of the evidence by the Tribunal is not called for. The role of the Tribunal in such situation lies only in seeing whether or not there has been any perversity, illegality or malafides and violation of principles of natural justice rendering the enquiry, finding or the punishment as void.

11. Here is a case which is seriously challenged as being a punishment imposed based on cadre bias upon the concerned workman, R. Vaidyanathan, Clerk/Shroff. While the Disciplinary Authority has punished both the Clerk and the Senior Manager together with the Sub-Staff, except the Sub-Staff, the two others appealed before the Appellate Authority, who in turn while dismissed the appeal of the Clerk/Shroff exonerated the Senior Manager from the charges and let him off scot free. What is really in challenge is the propriety of the punishment. The said question is beyond the scope of consideration by this Tribunal under Section-11A of the ID Act. While the propriety of the punishment falls for consideration compared to the exoneration of the Senior Manager, the reasons which weighed with the Appellate Authority in exonerating the Senior Manager required to be looked into. But no materials have been produced by the petitioner to show what are the reasons which prevailed upon the Appellate Authority to make a departure from the finding, exonerating the Senior Manager rendered by the Enquiry Officer or the Disciplinary Authority holding the Senior Manager guilty. Admittedly the Senior Manager has been found guilty by the Enquiry Officer as well as by the Disciplinary Authority.

12. The punishment of reduction in the scale of pay on Sr. R. Vaidyanathan being not dismissal or discharge, there is no scope for interference with the punishment. Then on the ground of propriety of the punishment as being discriminatory on the ground of cadre bias whether the punishment imposed on the employee lacks propriety has to be examined with reference to charges on which the Senior Manager faced the enquiry, the finding rendered and the punishment imposed initially and the reasons

therefor on which the finding is based and the punishment rests. Again why the Appellate Authority deviated from the finding to exonerate the Senior Manager from the charges is to be brought home with reference the relevant materials. In the absence of any such materials a comparative study not being enabled in the absence of evidence adduced at the instance of the petitioner the question of propriety is not possible of being adjudged. In any view of the matter the scope of the Tribunal to interfere with the punishment being restricted, the punishment is only to be kept intact. Hence it cannot be held that the punishment of reduction in the scale of pay of Sri R. Vaidyanathan and exoneration of the Branch Manager are not justified. The petitioner is not entitled any relief.

13. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 10th August, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked:—

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	26-12-2009	Letter dated 26-12-2009 to the Assistant Commissioner of Labour (Central), Chennai
Ex.W2	25-10-2010	Letter dated 25-10-2010 to the Assistant Commissioner of Labour (Central, Chennai—Rejoinder to the reply by the Management
Ex.W3	08-07-2008	Charge Sheet Ref:. ZO/CSBE/VG/194/2008-09 dated 08-07-2008 issued to Sri R. Vaidyanathan
Ex.W4	19-09-2008	Letter by the Defence Representative enclosing the Defence Summing up
Ex.W5	30-09-2008	Letter Ref.: CO/CBE/VG/320/2008-09 dated 30-09-2008 by the Disciplinary Authority enclosing the findings of the Enquiry Officer
Ex.W6	22-10-2008	Comments on the Enquiry Officer's findings submitted by the Employee
Ex.W7	10-02-2009	Letter Ref: CO/CBE/VG/544-2008-09 dated 10.02.2009 by the Circle Officer, Coimbatore enclosing the proposed punishment order of the Disciplinary Authority
Ex.W8	17-02-2009	Reply submitted by the Charge Sheeted Employee on the proposed punishment
Ex.W9	18-02-2009	Orders of the Disciplinary Authority imposing the punishment
Ex.W10	09-03-2009	Appeal submitted by the employee before the Appellate Authority
Ex.W11	28-07-2009	Orders of the Appellate Authority Ref: HRM/DPC/265/2009 dated 28-07-2009 disposing the appeal
Ex.W12	29-01-1992	Circular No. PRNL/141/91-92 on Scheme of Reward to those desisting dacoits/robbers/attacks by terrorists

On the Management's side

Ex. No.	Date	Description
(1)	(2)	(3)
Ex.M1	—	Manual of Instructions-XI-Security Management-Revised upto 30-06-2005
		Extract of Clause 5—reg. Remittance of cash, Cl. 5— (5.1 to 5.8) (2 pages)
Ex.M2	—	Extract of Cash Remittance Register pertaining to 18-01-2008
Ex.M3	09-06-2008	Show Cause Notice to R. Vaidyanathan
Ex.M4	—	Reply of R. Vaidyanathan to Show Cause Notice dated 09-06-2008
Ex.M5	12-08-2008 22-08-2008	Proceedings of Enquiry
Ex.M6	19-01-2008	Circle Security Officer's letter to DGM, Indian Bank, Chennai
Ex.M7	19-01-2008	Security Officer's letter to Circle Head, Indian Bank, Coimbatore
Ex.M8	21-01-2008	Coimbatore—CSO's letter to DGM and CSO—HO, Chennai
Ex.M9	18-01-2008	Cash Remittance details by Branch

(1)	(2)	(3)
Ex. M10.	18-01-2008	Credit Advice prepared by the Branch for Rs. 13.00 lakhs
Ex. M11	18-01-2008	Funds in Transit Debit voucher for Rs. 12 lakhs and Rs. 1.00 lakh
Ex. M12	18-01-2008	Debit Voucher of the Branch towards Local Conveyance for Rs. 160 and Debit voucher for Rs. 50 towards Residual expenses
Ex. M13	January '08	Copy of Branch Attendance Register
Ex. M14	03-08-2005	HO-Security Department Circular 55/5-2005-2006-Security of Cash in Transit
Ex. M15	14-03-2006	CO/CBE-Security Department Circular PRNL/147/2005-06 regarding threat to Bank's Security precautions
Ex. M16	16-12-2006	HO/Security Department Circular 137/2006-2007 regarding Security of Cash in Transit
Ex. M17	18-01-2008	FIR
Ex. M18.	17-02-2009	Proceedings of Personal Hearing
Ex. M19	18-02-2009	Orders of the Disciplinary Authority issued to R. Vaidyanathan
Ex. M20	02-02-2009	Orders of the Disciplinary Authority in respect of charge sheet issued to A. Venkatasubramanin, Senior Manager of the branch
Ex. M21	18-02-2009	Orders of the Disciplinary Authority in respect of Charge Sheet issued to M. Mani
Ex. M22	23-03-2009	Letter of Bank to M. Mani—Retiring him from service on completing 60 years of age—close of 30-04-2009
Ex. M23	—	Presenting Officer's summing up-received on 04-09-2008.

नई दिल्ली, 27 अगस्त, 2012

का.आ. 2993.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 87/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 14-8-2012 को प्राप्त हुआ था।

[सं. एल-12011/27/2011-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2993.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Cenral Government hereby publishes the Award (Ref. No. 87/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 14-8-2012.

[No. L-12011/27/2011-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 8th August, 2012

Present: A.N. JANARDANAN

Presiding Officer

Industrial Dispute No. 87/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Canara Bank and their Workmen]

BETWEEN

The Secretary : 1st Party/Petitioner Union
Canara Bank Staff Union
C/o Canara Bank, Oppankara
Street, Coimbatore-641001

Vs.

The Deputy General : 2nd Party/Respondent
Manager,
Canara Bank, Circle Office,
166, T. V. Swamy Road (West),
R.S. Puram,
Coimbatore-641002

Appearance :

For the 1st Party/Petitioner Union : M/s. K. Elango, Advocates

For the 2st Party/Management : M/s. Stree & Associate, Advocates

AWARD

The Central Governmemt, Ministry of Labour & Employment vide its Order No. L-12011/27/2011-1R(B-11) dated 19/20-09-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Canara Bank in imposing the punishment of "Censure" on Sri M. Manickassundaram is legal and justified? What relief the concerned workman is entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 87/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim and Counter Statements as the case may be. Thereafter when the matter stood posted from time to time for further steps and lately on 27-03-2012 for enquiry, petitioner was absent nor represented. Thereupon as per order dated 30-03-2012 an award was passed against the petitioner for default holding that the punishment of censure imposed on him is legal and justified for want of proof.

3. Thereafter upon application filed by the petitioner registered as IA 43 of 2012 supported by Affidavit claim to revoke the ex-parte order and to restore the ID on file in allowing thereof as per order dated 03-05-2012 the award passed on default was set aside and ID was restored to file.

4. The averments in the Claim Statement briefly read as follows:

The delinquent employee while was working as a Clerk at the Sengapalli Branch of the Respondent from 18-07-2003 to 14-08-2010 was charge sheeted on 17-03-2008 (i) alleged of having been negligent in keeping II set of double lock keys in a table drawer in an unlocked state leaving scope to have possible access by miscreant to the double lock of the branch, (ii) that on 12-04-2007 at about 3.30 PM Senior Manager and himself opened the double lock safe to keep Late Cash/NNND collections and even before completion of the task, he allowed the one key holder to leave the double lock room to attend a phone call. He was in double lock room and when one key holder was not present and the safe was open to have possible access to branch cash holding, (iii) he has not verified/checked the entire cash holding in the double lock immediately after return of one key holder to the double lock room, (iv) he has not recorded the movement of double lock keys in the relevant register of the branch and the case abstract entries pertaining to the following late cash receipt was not recorded, "Rs. 41,700.00 received on 12-04-2007 as Late Cash for NNND Accounts", (v) though the late cash was available in safe on 12-04-2007 he had not taken steps to record the same in the late cash register for 12-04-2007 and the entry was not duly authorized, (vi) his casual approach in handling/safe keeping of II set of double lock keys and non-adhering to systems and procedures/ exhibiting common prudence had resulted in cash shortage of Rs. 1,00,000 to the bank. A preliminary enquiry was held on 27-06-2008 in which he participated with defence representiative, Maheshwaran and Sri N. Venkatarman, Defence representative in the regular enquiry hold on 17th and 18th October, 2008. 21 documents were marked and 4 witnesses were examined. By the finding dated 26-12-2008, Charge No. (iii) was partially proved and all other charges not proved. Disciplinary Authority by his tentative finding dated 09-04-2009 disagreed with the finding and under Regulation-10 (5 of Chapter-11 of Canara Bank Service Code) held that the charges were proved. By order dated 09-07-2009 Disciplinary Authority held him guilty. Despite explanation of the employee dated 03-09-2009 claiming innocent proceeded against him. Appellate Authority on 16-11-2009 confirmed the punishment of censure and recovery of monetary loss. Conciliation having ended in failure the reference is caused to be made. The Enquiry Officer's finding has been given clearly after careful consideration of the materials. Disciplinary Authority varied without giving reasons. Punishment is unjustified, arbitrary, unreasonable and opposed to law.

It has been a general practice for Clerks to keep the drawers open which the employee just followed. With the Senior Manager leaving the safe in an open state to attend the phone call how the delinquent employee alone is responsible for the missing cash? The employee had received the second set of keys from Sri K. Sugumaran. Clerk on 12-12-2007 and on 13-04-2007 he handed over the same to Sri T.P. Subramanian before office hours. Sri T.P. Subramanian should have recorded the movement of second set of keys in the Register. Despite requests, Enquiry Officer did not examine Sri T.P. Subramanian. 12-04-2007 was a NPBW day and the cash abstract was not taken out at all. Therefore the late cash was entered duly in the Late Cash Register and kept safe as per the prevailing practice and delinquent employee had not committed any misconduct. Other staff members of the Branch who were in charge of holding one set of keys viz., S/Sri K. Baskaran, Sri T.P. Subramanian and K. Sugumaran are also equally responsible for the missing of cash. Attributing the employee alone is not proper. It is only fair that both the staff members are charge sheeted for the lapses. But he was only proceeded against by issuing charge sheet with ulterior motive. The alleged cash loss to the extent of Rs. 1.00 lakh is not proved. Punishment is illegal and unjustified. The punishment is to be removed.

5. Counter Statement averments briefly read as follows:

On 13-04-2007 while taking out cash for the day's transactions a cash shortage of Rs. 1.00 lakh was observed. After investigation the employee was charge sheeted for the misconduct in handling

second set of double lock keys. Investigation brought out negligent conduct on the part of the workman. Upon denial of charges enquiry was conducted as per Canara Bank Service Code applicable to the workman category. He participated in the enquriy with Defence Representative in full. The workman gave his submission dated 08-05-2009 to the findings in consideration of which the Disciplinary Authority held the charges as proved on 09-07-2009 and punished with a censure under Chapter-11, Clause-4(h) of Service Code. Action is legal and justified. Since Enquiry Officer arrived at his conclusion without properly appreciating the evidence the Disciplinary Authority based on evidence and for reasons disagreed with the findings of the Enquiry Officer. The employee himself had admitted having received the second set of keys from Sri Sukumaran and he was in custody of the second key till 13-04-2007 BOH.....till he handed over to Sri T.P. Subramanian and he also accepted that he left the keys in the table drawer and went out for tea alongwith NNND Agent showing his negligent attitude for which he is responsible which is proved. Hence he was asked to remit the mioety of the loss in terms of Clause-7 of Chapter-6 of Service Code by way of administrative action and not by punishment. That it is a general practice as claimed by him is not acceptable. It is indicative of negligent conduct only. Both the key holders have been held responsible. Episode of phone call to the Senior Manager is contradictory in nature to the submission before the Disciplinary Authority. The employee receiving the second set of keys from another should have ensured entries being made in the register and affixing of signature both by the receiving and handing over officials. Employee has never disputed that he has not received the keys. Missing of cash shortage heppened when he was holding double lock keys and noticed on 13-04-2007. Nothing prevented him from producing his witness. The key holders while keeping the late cash of Rs. 41,700 on 12-04-2007 were negligent as to the systems and procedures by not making entry in the cash abstract and also not counting the cash holding after return of the first key holder to the double lock room. The employee cannot be absolved from negligence as it has resulted in loss of Rs. 1.00 lakh. Petitioner has admitted the responsibility on the part of the employee. Senior Manager, Baskaran was also censured with recovery of Rs. 50,000/-. Police complaint which is for theft of cash whereas the employee is charge sheeted for negligence in duty. Censure has been duly imposed according to disciplinary rules. Punishment is legal and commensurate with the misconduct. Claim is to be dismissed with costs.

6. Points for consideration are:

(i) Whether the punishment of censure on Sri M. Manickasundaram is legal and justified?

(ii) To what relief the concerned workman is entitled?

7. Evidence consists of Ex.W1 to Ex.W9 on the petitioner's side marked on consent and Ex. M1 to Ex. M5 on the Respondent's side marked on consent with no oral evidence adduced on either side.

Points (i) & (ii)

8. Heard both sides. Perused the records, documents and written arguments filed on either side. Both sides argued orally and by way of written submissions in terms of their contentions in their respective pleadings. The punishment of censure imposed is on proved charges amounting of six in number, according to the Disciplinary Authority whereas according to the Enquiry Officer, of the six charges only third charge was partially proved and all the others not proved. The Disciplinary Authority discernibly was altering the finding after giving the petitioner an opportunity of being heard and for reasons. There is admission by the employee of having received the second set of keys from another Clerk, Sukumaran till 13-04-2007 till he handed over to T.P. Subramanian. It is also admitted by the employee that he had left the keys in the table drawer and went out for a tea alongwith NNND agent attributive of his negligent conduct. That it is a general practice as claimed by the petitioner is not at all tenable. Such a practice may go unnoticed or unquestioned until a contingency detrimental to the bank or all who are responsible like the one, as supervened herein. So long as no havoc or catastrophe supervenes a casual disregard of an established procedure, when departed or deviated from may not work harm. But the situation is different when any injurious consequences follow from out of such disregard. Seeking asylum explaining it as a general practice cannot be countenanced in legal parlance when the delinquent is being arraigned in the affair. He has not denier having received the keys. The missing of cash shortage is proved to have happened when he was holding double lock keys, that came to notice on 13-04-2007. No oral evidence is let in by the petitioner to prove his case. The key holder's responsiblity of causing entry to be made in the Cash Abstract and also in counting the cash holding after return of the first key holder to the double lock room cannot be lost sight of the Union also has admitted the petitioner's liability. He is charge sheeted for his negligence in his duty only. Recovery of Rs. 50,000 and odd amount from him is only an administrative action separately made and is not a double jeopardy. There is loss of cash of Rs. 1.00 lakh to the Bank and negation of that is to be proved by him. The altered finding rendered by the Disciplinary Authority is just and proper. The same is on a speaking order with reasons that sound well. It is also after giving opportunity to the concerned employee of being heard. The finding of the Disciplinary Authority is therefore only to be upheld

and is maintained. The punishment is also not liable to be interfered with for any reason. The same is also upheld. There is no scope for interference in the punishment in question under Section-11A of the ID Act. Therefore the punishment of censure on the employee is only legal and justified and the same is kept intact. The workman is not entitled to any relief.

9. The reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th August, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/1st Management : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ex.W1	02-05-2007	Report of investigation conducted on 19 & 26-04-2007 submitted to the Respondent with enclosures
Ex.W2	06-07-2007	Show-Cause Notice issued to the CSE
Ex.W3	09-08-2007	Explanation to the above notice given by the CSE
Ex.W4	03-09-2009	Appeal preferred by the CSE with Annexures
Ex.W5	16-11-2009	Order passed by the Appellate Authority
Ex.W6	31-03-2010	Petition filed by the CSE before Assistant Commissioner of Labour (Central)
Ex.W7	24-09-2010	Reply filed by the Respondent before Assistant Commissioner of Labour (Central)
Ex.W8	27-10-2010	Rejoinder filed by the CSE before Assistant Commissioner of Labour (Central)
Ex.W9	19/20-09-11	Order of Reference to this Hon'ble Tribunal

On the Management's side

Ex.No.	Date	Description
Ex.M1	17-03-2008	Chargesheet issued to the workman
Ex.M2	26-12-2008	Findings of the Enquiry Officer
Ex.M3	09-04-2009	Tentative findings of Disciplinary Authority
Ex.M4	09-07-2009	Orders of the Disciplinary Authority
Ex.M5	09-07-2009	Punishment proceedings.

नई दिल्ली, 27 अगस्त, 2012

का. आ. 2994.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 38/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था ।

[सं. एल.-12011/5/1998-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 38/2011) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of PUNJAB NATIONAL BANK and their workman, which was received by the Central Government on 16-8-2012.

[No. L-12011/5/1998-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 38/2011

The General Secretary,
All India New Bank of India Empls. Federation,
C/o PNB, L-Block, Connaught Circus,
New Delhi. ..... Workman

Versus

The General Manager,
P.N.B., Head Office,
Bhikaji Cama Place,
New Delhi. ...Management

AWARD

New Bank of India made huge losses. Considering its financial position, the Central Government in consultation with the Reserve Bank of India decided to merge it with the Punjab National Bank (hereinafter referred to as the Bank), Consequently a notification dated 4-9-1993 was issued and it was merged with the Bank. At the time of its merger, the New Bank of India had one Headquarter, 16 Regional Offices, two Training Centers and 591 branches. After its amalgamation with the Bank, the Bank decided not to have more than one Head Office or Regional Office at one and the same place. Number of employees had become surplus.

Therefore, the Bank framed two sets of re-development guidelines both dated 16-9-1993, one for the officers and the other for the award staff of erstwhile New Bank of India. The guidelines framed for re-development of officers of erstwhile New Bank of India had been the subject matter of challenge before High Court of Delhi in Civil Writ Petitions No. 46512, 4822 and 4835 all of 1993 which were dismissed on 5th October, 1993, 28th October, 1993 and 15th October, 1993 respectively.

2. All India Punjab National Bank Workers Federation (in short the Federation) challenged re-deployment guidelines before High Court of judicature at Allahabad by way of Writ Petition No. 39883 of 2003, which was granted by the High Court vide order dated 11-11-1993. A special appeal was filed by the Bank, wherein an interim order was passed on 20-11-1993. However, the concerned employees were given a discretion to comply with impugned transfer orders. None of re-deployed employees complied with transfer orders. Appeal was dismissed by the High Court vide its order dated 24-1-1994. The Bank preferred Special Leave Petition before the Apex Court wherein status quo order was passed. After converting special leave petition to a civil appeal the Apex Court granted the appeal and dismissed the Writ Petition filed by the Federation, vide its order dated 11-2-1997.

3. During pendency of the litigation referred above, the Bank issued a Personal Division Circular No. 1431 dated 27-6-1994, inviting options from its existing employees up to 30-9-1994 for being member of pension scheme framed by the Bank. Personal Division Circular No. 1439 was issued on 29-7-1994 wherein it was once again clarified that existing employs should exercise their option for pension by 30-9-1994. In case they do not send their option in the required format within stipulated time they shall be deemed to have opted for Contributory Provident Fund Scheme. The Bank also reiterated the aforesaid instructions in its Personal Division Circular No. 1448 dated 20-9-1994. Vide Circular No. 1450 dated 30-9-1994; the Bank had extended last date of submission of option for the existing employees up to 30-9-1994, as per advice of Indian Bank Association. It was once again reiterated in the circular that in case employees do not exercise their option by 30-9-1994 they shall be deemed to have opted in favour of Contributory Provident Fund Scheme. Though it was open for the members of the Federation to opt for the pension Scheme in lieu of the Contributory Provident Fund Scheme, yet they opted not to exercise such an option.

4. In terms of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, the Bank adopted the Pension Regulations in consultations with the Reserve Bank of India, with prior sanction of the Central Government. Thereafter the Pension Regulation were notified in Gazette of India on 29-9-1994. Pension Regulations were also circulated by the Bank to all its offices vide Personal Division Circular No. 1520 dated 15-11-1995. In terms of the Regulations the employees who were in service of the Bank before 29-9-1995. and continued to be in service of the Bank thereafter were to exercise an option for pension in writing within 120 days from the notified date to become a member of the fund. They were to authorize Trust of the Provident Fund of the Bank to transfer their entire contribution to the Bank along with the interest accrued thereon to the credit of the fund constituted for the purpose of Pension Regulations. The members of the Federation did not exercise option to become member of the fund constituted under Pension Regulations.

5. When litigation, referred above, came to an end the members of the Federation made representations to the Bank for permitting them to opt for the Pension Scheme. Those representations were not conceded to the Federation raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings ended into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12011/5/98-IR(B-II) New Delhi dated 19/20-1-1999 with the following terms :—

> "Whether the action of the Management of Punjab National Bank is not extending option in writing to be given by those employees to be member of the fund under Punjab National Bank (Employees) Pension Regulations 1995 who were in one or the other way not in their respective position in the bank their transfer orders in litigation and particularly when the Hon'ble Supreme Court vide judgment dated 11-2-1997 had given final verdict on the transfers as well as transfer policy is just and reasonable? If not, to what relief the effected workmen of the erstwhile New Bank of India are entitled?"

6. Claim statement has been filed by the General Secretary of the Federation, pleading that the Federation represents majority of the employees of erstwhile New Bank of India, working in different branches/offices in different States. Erstwhile New Bank of India had granted recognition to the Federation in 1971. Pursuant to the notification issued by Ministry of Finance, Banking Division, Government of India, New Delhi. New Bank of India was merged with the Bank on 4-9-1993. Thereafter the Bank adopted a policy of step motherly treatment to the employees of the erstwhile New Bank of India and formulated discriminatory and vindictive transfer policy dated 16-9-1993 for their deployment.

7. Mass transfer of employees of erstwhile New Bank of India were effected throughout the country to remote and far flung places.

8. The Federation leads that transfer guidelines dated 16-9-1993 were challenged by way of Writ Petition before Allahabad High Court as well as in other High Courts/ Courts for getting it declared as discriminatory, vindictive and arbitrary. Allahabad High Court granted interim stay on 1-11-1993 against implementation of transfer guidelines.

Despite the interim stay granted by Allahabad High Court, the Bank effected transfer of more than 500 employees from Delhi and about 1000 all over India. By its order dated 11-11-1993 Allahabad High Court quashed guidelines framed by the Bank. Affected employees represented to the Bank for reconsideration of their transfer orders and to allow them to join back in respective branchs/offices from where they were transferred. Instead of complying with the orders dated 11-11-1993, the Bank filed an appeal before the Division Bench. The Division Bench had granted an interim order in favour of the Bank. Later on the High Court dismissed the appeal vide its order dated 24-1-1996. All affected employees represented again in writing to the Bank to allow them to join their respective branches/offices from where they were transferred. Instead of considering the representations made by the employees, the Bank preferred a Special Leave petition to the Supreme Court of India. On 11-3-1996 the Supreme Court granted interim order of status quo. Ultimately on 11-2-1997 the Supreme Court granted the appeal. All affected employees again represented to the Bank for cancellation/modification of their transfer orders. However, their representations were rejected, without giving any cogent reasons.

9. The Federation pleads that the Bank had not given a fair and reasonable opportunity to its employees to exercise option to become member of Pension Scheme. Such an option was not given even to the employees who had retired from service after 1-1-1986 on the plea that cut off date for exercising option has expired. The Bank had not issued any instructions in writing along with transfer orders for exercising option to be a member of the Pension Scheme. No fault can be attributed to the employees in the matter of exercising their option for Pension Scheme. They were deliberately and intentionally deprived of their legitimate right. The Bank had discriminated the employees of erstwhile New Bank of India in the matter of exercising option for being member of the Pension Scheme. The Federation pleads that copy of the Pension Scheme or any instructions in that regard were not supplied to its members. They were deprived illegally and unilaterally of their legitimate right to pension, a security against old days. The Federation made several representations to the Bank to allow its employees to exercise their option for being member of the Pension Scheme, but to no avail. The Bank had victimized employees of the erstwhile New Bank of India. It has been claimed that the Bank may be directed to extend the date of exercising option for employees of the erstwhile New Bank of India for being member of the Pension Scheme, since they were in one or the other way not in their respective position after their transfer orders and were involved in litigation. Being member of the Pension Scheme is their legitimate right which cannot be deprived by the Bank.

10. The claim has been demurred by the Bank, pleading that the reference made to this Tribunal is fait accmoply since it stands adjudicated in view of the order dated 11-9-1997 passed by the Apex Court in Civil Appeal No. 747/1997. It has further been pleaded that the industrial dispute has not been validly espoused. The Bank pleads that the Pension Scheme has been introduced as a second retiral benefit in the banking industry in lieu of the Contributory Provident Scheme, in terms of the settlement dated 29-10-1993. The settlement envisaged that the option for pension would be optional so far as the existing employees are concerned. The terms of reference project that the issue involved relates to existing employees only and there may be no question of raising an issue by the Federation in respect of other category of employees, including those who stood retired or whose transfer orders were not involved in litigation.

11. The Bank pleads that having regard to the settlement dated 29-10-1993, Personal Division Circular No. 1431 dated 27th June, 1994 was issued to all offices inviting option for Pension Scheme from the existing employees up to 30th September, 1994. Another Circular No. 1439 dated 29th July, 1994 was issued, wherein it was once again clarified that having regard to settlement dated 29-10-1993 Personal Division Circular No. 1439 dated 29th July, 1994 was issued wherein it was once again clarified that the existing employees should exercise their option for pension by 30th September, 1994. In case of their failure to send option in the required format within stipulated time they shall be deemed to have opted for Contributory Provident Fund Scheme. Vide Circular No. 1448 dated 20-9-1994 the Bank had reiterated the aforesaid instructions. Subsequently Circular No. 1450 dated 30th September, 1994 was issued and the Bank had extended last date of submission of option by the existing employees up to 30-11-1994. The above Circular was issued in pursuance of advice given by Indian Bank Association. In this Circular it was again clarified that in case employees do not exercise their option by 30-9-1994 they shall be deemed to have opted in favour of Contributory Provident Scheme. It was open for the members of Federation to opt for Pension Scheme in lieu of Contributory Provident Fund Scheme. Members of the Federation failed to exercise such an option and are deemed to have opted for Contributory Provident Fund Scheme.

12. The Bank pleads that thereafter Pension Regulations were finalized at industry level after discussions and deliberations with the workmen union. The aforesaid Regulations were adopted by the Board of Directors of the Bank in consultation with the Reserve Bank of India and with prior sanction of the Central Government in terms of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Pension Regulations were notified in Gazette of India on 29-9-1995. Thereafter those Regulations were circulated to all offices of the Bank vide Circular No. 1520 dated 15-11-1995. In terms of those Regulations, the existing employees were to exercise option for pension in writing within 120 days from the notified date to become a member of the Pension Scheme under

those Regulations. An employee was to authorize Trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Fund constituted under the Regulations. Admittedly the members of the Federation did not exercise their option for pension within the dates prescribed either under Pension Regulations or within 120 days after the notification of the Pension Regulation on 29-5-1995 in Gazette of India and even in response to circular issued by the Bank to all its offices. When members of the Federation failed to exercise their option, they are not entitled to contend that they should be given one more opportunity to exercise the option for pension, since their transfer orders were in litigation. The Bank claims that it is not the case of the Federation that its members had ever approached the Bank during pendency of the litigation seeking permission to exercise their option for being member of the Pension Scheme. The Bank is not authorized to make any deviation in Pension Regulations which are statutory in nature.

13. The Bank further pleads that two sets of re-deployment guidelines were framed on 16-9-1993, one applicable to the officers and the other applicable to award staff of the erstwhile New Bank of India. Re-deployment guidelines framed for the officers had been subject matter of challenge before the High Court of Delhi. Writ Petitions filed in that regard were dismissed. Thereafter a Writ Petition before Allahabad High Court was filed which met its fate in dismissal by the Apex Court, as referred above. It has been asserted that option was available with the members of the Federation to exercise their legitimate rights for being members of the Pension Scheme. Since the members of the Federation remained absent from their duties and contested re-deployment guidelines, they cannot dispute the consequences which occur to them for not exercising their option for Pension Scheme within the prescribed time. It has been claimed that reference is liable to be rejected.

14. In rejoinder the Federation re-iterates its stand.

15. On 10-3-2005 parties made a statement before the Tribunal that issues involved may be resolved without any evidence, since facts are not in dispute. Accordingly, no evidence was adduced in the matter by either of the parties.

16. Vide order No. Z-22019/6/2007-IR (C-I) New Delhi dated 11-2-2008 the case was transferred by the appropriate Government to Central Government Industrial Tribunal No. II, New Delhi, for adjudication.

17. Vide order No. Z-22019/6/2007-IR (C-I) New Delhi dated 30-3-2011 the case was retransferred to this Tribunal by the appropriate Government for adjudication.

18. Arguments were heard at the bar. Shri J.N. Kapoor, authorized representative, advanced arguments on behalf of the Federation. Shri Rajat Arora, authorized representative, presented facts on behalf of the Bank. Written submissions were already thereon record filed by the Federation somewhere in 2008. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

19. It is not a matter of dispute that New Bank of India was running in losses. The Central Government, in consultation with the Reserve Bank of India decided to merge it with the Bank, considering its financial position. When the decision was taken, at that time New Bank of India had one Head Office, 16 Regional Offices, two Training Centers and 591 branches all over the country. A notification dated 4-9-1993 was issued and New Bank of India was amalgamated with the Bank. The Bank did not find it expedient to have more than one Head Office or Regional Offices at the place where it had its administrative offices. It was thought expedient to discontinue such offices. A large number of employees became surplus, due to such discontinuance of the administrative offices. Bank framed two different sets of re-deployment guidelines, one applicable to the officers and the other to the award staff of New Bank of India. Those guidelines came under challenge and ultimately approved by the Apex Court of India. It would be in the fitness of things to extract the observations made by the Apex Court which are extracted thus:—

> "....as rightly submitted by Mr. Reddy, Ld. Addl. Solicitor General relying upon the decision of this court in Syndicate Bank Ltd., and its workmen [1966 (1) LLJ (440)] that there can be no doubt that the banks are entitled to decide on consideration of the necessity of banking business where the transfer of the employee should be made to a particular branch and that the management is in the best position to judge how to distribute its employees between the different branches, therefore, jurisdiction of framing guidelines and then effecting transfers in accordance therewith cannot be said to be inconsistent with or contrary to the statutory amalgamation and placement schemes to come."
>
> ".....therefore, those guidelines even if they are treated as a part of terms and conditions of their service, being not applicable, cannot make the impugned transfers bad. Though the petitioner and the Ld. Counsel for the respondents referred to certain awards and bipartite settlement, nothing particular was carried out to say that the workmen-employees of NBI would under no circumstances, be transferred outside their stations. Our attention was also drawn by Dr. Dhawan to the guidelines issued by the Punjab National Bank with respect to transfer of its staff. We find that they also pertain to rotational transfer and, therefore, the respondents cannot derive any

benefit from it in their challenge to the deployment of being rendered surplus as a result of amalgamation".

20. In October, 1993 a settlement was arrived at between 58 Banks and workmen represented by All India Bank Employees Association. The settlement so arrived at is known as Supplementary Settlement dated 29-10-1993. In the said settlement it was agreed to introduce Pension Scheme in banks for their workmen—employees in lieu of Employees Contribution to Provident Fund. Salient features of the settlement; relevant for the controversy, are as follows:

"1. The member banks set out in the schedule I hereto shall introduce pension as second retirement benefit scheme in lieu of contributory provident fund where it does not exist for the workmen employees of the member banks with effect from 1st November, 1993.

2. Pension as a second retrial benefit scheme in lieu of contributory provident fund shall be available to the following category of employees/retired employees from 1st November, 1993 or the date of retirement, whichever is later.

(i) Employees who join service of the bank on or after 1st November, 1993;

(ii) Employees in service of the bank as on 31st October, 1993 and who on or before 30th June, 1994 exercise an option in writing in response to bank's notice to this effect to be given not later than 31st December, 1993 to become members of the pension scheme and to cease to be members of the contributory provident fund scheme with effect from 1st November, 1993 and irrevocably authorize the bank or the trustees of the contributory provident fund to transfer the entire contribution of the bank along with entire interest accrued thereon to the credit of pension fund to be created for this purpose.

(iii) Retired employees who were in service of the bank/ merged bank on or after 31st December, 1985 and retired on or after 1st January, 1986 but before 1st November, 1993 provided that such retired employees apply for it on their own on the format prescribed by the each bank and refund within a period of six months reckoned form 1st November, 1993, the bank's entire contribution to the provident fund including interest received with further simple interest at the rate of 6 per cent per annum form the date of withdrawal of the provident fund amount till the date of refund.

(iv) Permanent part-time employees drawing scale wages.

Note: Wherever in any other bank the existing or agreed package of superannuation benefits comprising CPF/ Pension/Gratuity are superior to the package comprising of pension and Gratuity under this Settlement, the Bank in concurrence with their Union may opt to continue with their existing or agreed package of retiral benefits".

21. Having regard to the said settlement, the Bank issued circular No. 1431 dated 27th June, 1994 inviting options for opting to be a member to the Pension Scheme from existing employees up to 30th September, 1994. Along with the said circular the Bank circulated its Pension Regulations, known as Punjab National Bank Employees (Pension Regulations), 1993. Those Regulations were applicable to:—

"(i) Employees who joined service of the bank on or after 1-11-1993.

(ii) Employees in service of the bank as on 31-10-1993 and who exercised option in writing in response to banks notice to this effect to become members of the Contributory Provident Fund Scheme with effect from 1-11-1993 and irrevocably authorized Bank and the Trustees of the Contributory Provident Fund to transfer the entire contribution of the bank along with entire interest accrued thereon to the credit of Pension Fund to be credited for its purpose.

(iii) By way of special dispensation to the employees who had retired on or after 1-1-1986 but before 1-11-1993 provided that such retired employees applied on the form prescribed by the bank and refund by the date decided by the bank, the banks entire contribution to the Provident Fund including interest received with further 6% simple interest per annum from the date of withdrawal of the Provident Fund Amount till the date of refund.

(iv) An employee who is recruited on or after 1-11-1993 at the age of 35 years and above may within a period of three months from the date of his employment elect to forge his right to pension whereupon there shall be eligible to subscribe to Contributory Provident Fund.

"(a) Options referred in this Regulation once exercised shall be final

(b) Options referred in (ii) and (iii) should be exerted within six months and four months respectively from the date of notification issued by the Indian Banks Association".

22. Circular No. 1431 issued on 27th June, 1994 was sent to all offices of the Bank inviting options for Pension Scheme from existing employees up to 30-9-1994. Another circular No. 1439 was issued on 29th July, 1994 wherein it was once again clarified that existing employees should exercise their option for pension by 30th September, 1994 and in case they do not send their option form within the stipulated time, they shall be deemed to have opted for

Contributory Provident Fund Scheme. Circular No. 1448 was issued on 20th September, 1994, wherein the aforesaid instructions were reiterated. In circular No. 1450 issued on 30-9-1994, the Bank had extended last date of submission of option letter by the existing employees up to 30-11-1994, as advised by the Indian Banks Association. The circular makes it clear that it is once again clarified that in case employees do not exercise their option by 30-11-1994 they shall be deemed to have opted in favour of the Contributory Provident Fund Scheme.

23. Settlement dated 29th October, 1993 was entered into at industry level and it was well known to all concerned that the Banks who were parties to the settlement, were required to introduce a Pension Scheme as a second retiral benefit scheme in lieu of the Contributory Provident Fund. Therefore, it cannot be agitated by the Federation that it was not within the knowledge of its members that a Pension Scheme would be introduced by the Bank, in consideration of the settlement dated 29-10-1993. Pension Regulations, 1993 were circulated by the Bank to all its existing employees time and again, calling upon them to exercise their option to become member of the Pension Regulations. Last date of Submission of those options was extended up to 30-11-1994. Despite issuance of those circulars the members of the Federation had not to opted for the Pension Regulations. Last date for submission of those options was extended up to 30-11-1994. Despite issuance of those circulars the members of the Federation did not opt for the Pension Regulations.

24. Provisions of Section 19 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 enables a Board of Directors of a corresponding new bank after consultation with the Reserve Bank of India and with the previous sanction of the Central Government to make regulations, not inconsistent with the provisions of that Act, for giving effect to the provisions contained in the said Act. Clause (f) of sub-section (2) of Section 19 of the said Act authorizes corresponding new bank to make regulations for the establishment and maintenance of superannuation, pension, Provident Fund or other funds for the benefit of officers or other employees of the bank or of the dependants of such officers or other employees of the granting of superannuation allowances, annuities and pension payable out of such fund. In exercise of the powers, referred above, the Board of Directors of the Bank after consultation with the Reserve Bank of India made Pension Regulations known as "Punjab National Bank (Employee's) Pension Regulations, 1995". Those Regulations were notified in Gazette of India on 29th September, 1995. After Gazette Notification circular No. 1520 was issued by the Bank on 15-11-1995 calling upon existing employees, who were in the service of the Bank before the notified date to exercise option for pension in writing within 120 days from the notified date to become member of the fund and to authorize the Trust of the Provident Fund of the Bank to transfer all contributions of the Bank along with interest accrued thereon to the credit of the Fund constituted for the purpose under those Regulations.

25. The Federation nowhere disputes that the above Regulations were published in Part III, Section IV, of Extra Ordinary Gazette of India on 29th September, 1995. This notification makes it clear that it was published under the proper authority in the official gazette and all concerned were notified of issuance of the aforesaid regulations by the Bank. The members of the Federation cannot claim that they had no knowledge of the notification dated 29th September, 1995. Consequently it is clear that publication of the Pension Regulations in the official gazette made well known to the members of the Federation that the Bank had framed its Pension Regulations, 1995. As per the Regulations it were applicable to employees:—

(i) (a) Were in the service of the bank on or after first day of January 1986 who had retired before first day of November 1993, and

(b) Exercise option in writing within 120 days from the notified date to become member of the fund, and

(c) Refund within 60 days after the expiry of the said period of 120 days specified in clause (b), the entire amount of the bank contribution to the Provident Fund including interest accrued there on together with future Simple Interest @ of 6 % on the said amount from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the bank, or

(ii) (a) Have retired on or after the first day of November 1993 but before the notified date, and

(b) exercise option in writing within 120 days from the notified date to become member of the fund, and

(c) Refund within 60 days after the expiry of the said period of 120 days specified in clause (b), and the entire amount of the bank contribution to the Provident Fund including interest accrued there on together with future Simple Interest @ of 6% on the said amount from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the bank, or

(iii) (a) Are in the service of the bank before the notified date and continues to be in the service of the bank on or after the notified date, and

(b) Exercise option in writing within 120 days from the notified date to become member of the fund, and

(c) Authorized trust of the Provident Fund of the bank to transfer the entire contribution along with interest accrued there on to the credit of the fund constituted for the purpose under Regulation 5, or

(iv) Joined the service of the bank on or after the notified date.

26. An option exercised before the notified date by an employee or the family of a deceased employee in pursuance of the settlement shall be deemed to be an option for the above Regulations, if such an employee or family of the deceased refund within 60 days from the notified date the amount of the bank's contribution to the Provident Fund including interest accrued there on together with further simple interest in accordance with the provisions of the above Regulations and in case employer contribution of the Provident Fund has not been received from the Provident Fund Trust has authorized or authorizes within 60 days before the notified date, to Trustees of the Provident Fund of the bank to transfer the entire contributions of the bank to the Provident Fund including interest accrued thereon in accordance with the provision to the credit of the fund constituted for that purpose under those Regulations. The options under the above regulations once exercised shall be final.

27. Thus it is emerging that the members of the Federation were to exercise option to become member of the Pension Fund within 120 days from the notified date and to refund within 60 days there after the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon together with simple interest @ of 6% per annum on the said amount from the date of the settlement of the Provident Fund account, till the date of the fund of the aforesaid amount to the Bank. Admittedly, no option was exercised by the members of the Federation to become members of the aforesaid Pension Regulations, not to talk of return of entire amount of bank's contribution to the Provident Fund alongwith interest accrued thereon together with simple interest @ of 6% on the said amount. When such an option was not exercised by the members of the Federation, they could not become the members of the Pension Regulations Fund.

28. At time and again members of the Federation made representation for recalling of their transfer orders and for their posting at respective offices/branches from where they were transferred. However, at no point of time any one of them submitted option for being a member to the Pension Regulations 1993 or 1995. Despite publication of Pension Regulations 1995 in Extraordinary Gazette of India none of them opted to exercise their option. It cannot be said that they were not aware of Pension Regulations 1995 coming into force. Notified date was well within their knowledge but they opted not to be a member of the fund constituted under those Regulations. Therefore, it is evident that they opted to remain to be member(s) of the Contributory Provident Fund Scheme. In such a situation it cannot be said that the act of the Bank in not extending the option in writing to the members of the Federation for becoming members of the Fund under Pension Regulation is legal. No illegality in the action for the Bank has been brought over the record Members of the Federation want to avail benefit out of their own wrong when they were litigating and abstaining away from their duties, which benefit cannot be extended to them. When they have not opted to become member of the Pension Regulations 1995, the Bank cannot be called upon to extend option to them at the belated juncture for becoming member of the Fund under Pension Regulations 1995. Consequently I find no illegality in the action of the Bank.

29. Whether fixation of a date for exercise of an option to be a member of pension scheme can be held to be arbitrary and violative of provisions of equality before law? The Apex Court in D.S. Nakara [1983 SCR (2) 165] ruled that: (1) Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, but it is governed by the rules and an employee who comes within those rules is entitled to claim pension, (2) That the pension is not an ex-gratia payment but it is a payment for the past service rendered, and (3) It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old days they would not be left in lurch. It was further ruled therein that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goal for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured atleast when it is mostly needed and least available, namely, in the fall of life.

30. Considering the raison d'etre for payment of pension *viz.*, the pension is paid for the past satisfactory service rendered, and to avoid destitution in old age as well as a social welfare or socio-economic justice measure, the differential treatment for those retiring prior to a certain date and those retiring subsequently was done away by the Apex Court, declaring the choice of the date as arbitrary and violative of Article 14 of the constitution. The cutoff date in connection with the demand of pension was struck down. It was further ruled therein that all pensioners governed by the Pension Rules 1972 and Army Pension Regulations shall be entitled to pension computed under the liberalized pension scheme from the specified date, irrespective of the date of retirement.

31. In R. Subramaniam [1996 (10) S.C.C. 72] the Apex Court was confronted with a situation whether the government can resist claim of the petitioner, who retired in 1971 but did not opt for Pension Scheme rather opted for the Provident Fund Scheme, seeking direction to the

Government for grant of pension in his favour in pursuance with order dated 11-11-97 passed by the Central Administrative Tribunal. Considering the facts of that case the Apex Court allowed the petition. The observation made by the Court are extracted thus:

> "..... the Union, in our opinion, cannot successfully resist the claim of petitioner when the Tribunal has directed that this benefit shall be granted even to those employees who retired on or before the Pension Scheme was introduced and opt for it even now. Since the petitioner opted for the Pension Scheme in terms of the order passed by the Tribunal may be in 1990, we are of the opinion that in the facts and circumstances of the case the respondent should extend same benefit to the petitioner as has been extended to others".

32. In R. Subramaniam (supra) the claim of the employee was allowed by the Apex Court since in an earlier order, the Central Administrative Tribunal had allowed the claim of the Railway employees to switch over to the Pension Scheme and the order of the Central Administrative Tribunal had become final on the dismissal of the special leave petition and the review petition by the Court. The said case was decided by the Apex Court on the facts of the controversy therein and that decision cannot serve as a precedent. See Shyam Babu Maheswari [2011 (6) S.C.C. 412].

33. Cut off date for applicability of pensionary benefits is fixed by the executive authority keeping in view the ecpnomic conditions, financial constrains and many other administrative and other attending circumstances. The law laid by the Apex Court in D.S. Nakara (supra) strucking down the cut off date in connection with the demand of the pension was considerably watered down in Amarnath Goyal [2005 (106) FLR 1062], wherein relying the decisions in P.N. Menon [1994 (68) FLR 1212] it was laid as follows:

> "Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

34. In N. Subbarayudu [2008 (117) FLR 369] the Apex Court ruled that fixing cut off dates relating to grant of pensionary benefits is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it latently discriminatory and arbitrary. The Court went on to say there may be various considerations in the mind of the executive authorities due to which, a particular cut off date has been fixed. These consideration can be financial, administrative or other consideration. The Court must exercise judicial restraint and must ordinarily leave it to be executive authorities to fix the cut off date. The Government must be left with some leeway and freeplay at the joints of in this connection.

35. In Shyam Babu Maheshwari (supra) Office Memorandum dated 6-6-85 issued by the Ministry of Personnel & Training Administrative Reforms and Public Grievances and Pension (Department of Personnel and Training), which was adopted by NCERT, was under challenge before the Apex Court. Relevant portion of the said office memorandum is extracted thus:

> "..... in the light of these changes, the President is now pleased to decide that Central Government employees who have retained the Contributory Provident Funds benefit is terms of Rule 38 of the Contributory Provident Fund Rules (India) 1962 or in terms of any other order issued in this behalf, may be allowed another opportunity to opt for the Pension Scheme as laid down in the Central Civil Services (Pension) Rules, 1972. The option is open to those Government employees who were in service on 31-3-85 and retiring from service on or after that date. The option should be exercised within a period of 6 months from the date of issue of this O.M. Options once exercised shall be final."

36. The Court ruled that it will be clear from the language of the aforesaid Office Memorandum that the option to an employee to switch over from the C.P.F. Scheme to the Pension Scheme was open to only those employees who were in service on 31-3-85 and who are retiring on or after 31-3-85. By 31-3-85, admittedly, the respondent had retired, his date of retirement being 31-7-84. It was ruled that the respondent was not entitled to fresh option to switch over from the CPF Scheme to the Pension Scheme. In view of law laid above, it cannot be said that fixation of a date by the bank to exercise an option to be a member of the Fund under Pension Regulations 1995 cannot be held to be arbitrary, since such cut off date was fixed on consideration of variety of reasons. Action of the bank cannot be brushed asides on that count.

37. For consideration of aspects of social justice, the Tribunal has to keep in mind that the Act is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our Constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLJ 366].

38. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out Reference can be made to precedent in Rashtriya Mill Mazdoor Sangh [1960 (II) LLJ 263]. In J.K. Cotton Spinning & Weaving Mills Company Ltd. [1963 (II) LLJ 435] the Apex Court ruled that industrial disputes are to be adjudicated laced with the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted thus:

> "In our opinion the argument that the considerations of social justice are irrelevant and untennable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasised the relevance, validity and significance of doctrine of social justice..... Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities".

39. In Ahmedabad Manufacturing and Calico Printing Company Ltd. [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the industrial adjudication cannot and should not ignore the claims of social justice. Same views were expressed in Basti Sagar Mills Company Ltd. [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

40. Bipartite Settlement dated 27th April 2010 (known as 9th Bipartite Settlement) was entered into between Indian Banks' Association and workmen of the banks represented by their respective unions, wherein it was settled that another option should be given to the employees for joining existing pension scheme. Relevant portion of the said settlement is extracted as follows.

"(2) Another option for joining the existing Pension Scheme shall be extended to those employees who:—

(I) (a) were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/ 26th March 1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Settlement;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) authorise the Trust of the Provident Fund of the bank to transfer the entire contribution of the bank along with interest accrued thereon to the credit of the Pension Fund.

(II) (a) were in service of the bank prior to 29th September 1995 in case of Nationalized Banks/ 26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and prior to the date of this Settlement;

(b) exercise an option in writing within 60 days from the date of offer to become a member of the Pension Fund and

(c) refund within 30 days after expiry of the said period of 60 days, the entire amount of the banks contribution to the Provident Fund and interest accrued thereon received by the employee on retirement together with his share in contribution towards meeting 30% of Rs. 3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2(III) and 2(IV) of this agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received by the employee on retirement.

(III) The family of those employees who were in the service of the bank prior to 29th September, 1995 in case of Nationalized Banks/26th March, 1996 in case of Associate Banks of State Bank of India retired after that date and died will be eligible for family pension, provided—

(a) the family of the deceased employee exercises option in writing within 60 days of the offer to become a member of the Pension Fund and

(b) refund within 30 days after expiry of the said period of 60 days, the entire amount of the

bank's contribution to the Provident Fund and interest accrued thereon received by the deceased employee on retirement together with his share in contribution towards meeting 30% of Rs. 3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2(III) and 2(IV) of this agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received by the employee on retirement.

(IV) The family of those employees who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India, out have died while in service of the bank after that date will be eligible for family pension, provided—

(a) the family of the deceased employee exercises an option in writing within 60 days of the offer to become a member of a Pension Fund and

(b) refund within 30 days after expiry of the said period of 60 days mentioned above, the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received upon death of the employee together with his share in contribution towards meeting 30% of Rs. 3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2(III) and 2(IV) of this agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received on death of the employee".

41. Circular No. 8/10 dated 16-8-2010 was issued by the bank in pursuance of 9th Bipartite Settlement. In terms of the settlement, referred above, the bank gave another pension option to its workmen employees. Relevant portion of the said circular is extracted thus:

"1. Employees/Officers who were in the service of the bank prior to 29th September 1995 and continued to be in the service of the bank on the date of settlement/ joint note dated 27-04-2010 and thereafter or have retired on or after 27-04-2010 provided that they:

1. Exercise an option in writing within 60 days from the date of offer, to become a member of the Pension fund and

2. Authorize the Trust of the Provident Fund of the Bank to transfer the entire contribution of the bank along with interest accrued thereon to the credit of the Pension Fund.

3. Employees/Officers in service including those who retired on or after 27-04-2010 will also have to contribute their share in contribution towards meeting 30% of funding gap from their arrears received on account of Wage Revision. It has been worked out @ 2.8 times of the Revised Pay for the month of November 2007.

4. However, the employees who had retired on or after 27-04-2010 will in addition to the said 2.8 times of revised pay have to refund Bank's Contribution to the Provident Fund along with up to date interest paid to them on retirement.

2. Employees/Officers who were in the serivce of the bank prior to 29th September 1995 and retired after that date but prior to the date of settlement/joint note dated 27-04-2010 provided that they:

1. Exercise an option in writing within 60 days from the date of offer, to become a member of the Pension fund and

2. Refund within 30 days after expiry of the said period of 60 days, the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received by him on retirement together with his share in contribution towards meeting 30% of the funding gap. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amout of Bank's contribution to Provident Fund and interest thereon received by the officer/employee on retirement".

42. Out of the terms of settlement, referred above and ciruclar No.8/10 dated 16-8-10 it creep over the record that it was decided that another option shall be given to the employees who fall in the categories referred above. Apparently members of the Federation fall within the categories referred above. Thus it is emerging over the record that on acturial valuation of liabilities, it was decided that another option should be given to the employees to join existing pension scheme. Therefore it is evident that in view of terms of 9th Bipartite Settlement the employees of the Federation shall get another option for joining the

existing pension scheme. No evidence has been brought over the record that the bank had given such an option to the members of the Federation, to be members of existing penion scheme. Thus opportunity to be a member of existing pension scheme cannot be denied to the members of the Federation. In view of these changed circumstances the action of the bank would not answer the standards of justifiability. Employees of the Federation shall be given another option to join the existing pension scheme, who shall abide by the terms of settlement in respect of refund of their entire amount of the banks contribution to the provident fund and interest accrued there on received by the employees to the credit of the provident fund/on retirement together with his share in contribution, towards meeting 30 percent of the estimated funding gap of rupees 3115 crores. An Award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 13-7-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 27 अगस्त, 2012

का. आ. 2995.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 26/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-08-2012 को प्राप्त हुआ था।

[सं. एल-12012/29/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 27th August, 2012

S.O. 2995.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.26/2010) of the Central Government Industrial Tribunal/Labour Court-1, New Delh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 07-08-2012.

[No. L-12012/29/2010-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 26/2010

Shri Rajesh Dabas,
R/o H.No. 605,
Village and Post Ladpur,
New Delhi-110081. ....Workman

Versus

The Chairman & Managing Director,
Punjab National Bank,
7-Bhikaji Cama Place,
New Delhi. ....Management

AWARD

Chairman, K.G. Denim Ltd., Coimbatore came to meet Chairman and Managing Director, Punjab National Bank (in short the bank) on 13th of November, 2007. While going inside the cabin of the Chairman & Managing Director of the bank, the visitor kept his mobile phone outside. When he came out of the cabin of the Chairman & Managing Director, he found his mobile phone missing from the place where it was kept by him. He lodged a report with the bank authorities. Search for the said mobile phone was conducted. Persons present in the office were interrogated. Shri Rajesh Dabas, who was working as peon in General Services Administration Division, Bhikaji Cama Place, New Delhi, got that mobile phone recovered from a place on top of an almirah, kept on 5th floor of the said building, during night hours of 14th of November, 2007.

2. Shri Dabas was placed under suspension on 15-11-2007. A charge sheet was served upon him on 26-11-2007. Reply to the charge sheet was found not to be satisfactory. A domestic enquiry was constituted. Shri Dabas participated in enquiry. Enquiry Officer submitted his report to the Disciplinary Authority, declaring therein that Shri Dabas was guilty of the charges levelled against him. Shri Dabas was awarded punishment of compulsory retirement with superannuation benefits, *vide* order dated 05-06-2008. Feeling aggrieved by the said order, Shri Dabas raised an industrial dispute before the Conciliation Officer. As no settlement could arrive at, Conciliation Officer submitted a failure report to the appropriate Government. On consideration of the failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/29/2010-IR(B-II), New Delhi dated 19-04-2010. with the following terms:

> "Whether the action of the management of Punjab National Bank in imposing compulsory retirement with superannuation benefit punishment *vide* order dated 05-06-2008 on Shri Dabas, the workman, is legal and justified? What relief the workman is entitled to?"

Claim statement was not filed by Shri Rajesh Dabas for a considerable period. When the claimant opted not to file his claim statement, the bank was called upon to file its response to the reference order. On consideration of facts submitted by the bank, an award was passed in favour of the Bank and against Shri Dabas on 21-05-2010.

4. Shri Dabas assailed that award before the High Court of Delhi by way of Writ Petition (C) No. 8113 of 2010. With the consent of the parties, the High Court set aside the award *vide* its order dated 18-03-2011 and remitted the matter back to this Tribunal.

5. Claim statement was filed by Shri Dabas pleading therein that he joined services of the Bank in 1993. He worked to the entire satisfaction of his superiors and never gave any chance of complaint to them. On 15-11-2007, he was suspended alleging that he was involved in theft of a Nokia mobile phone from the Head Office of the bank, which theft took place on 13-11-2007. False and fabricated chargesheet was served upon him. He submitted reply to the said chargesheet, whcih was found to be unsatisfactory. Shri M.K. Ray was appointed as Enquiry Officer. Enquiry conducted by him was in uttar violation of principles of natural justice. Enquiry Officer opted not to explain procedure of enquiry to him. Copy of the CD was not supplied to him. Neither his version was correctly recorded nor he was given an opportunity to lead evidence in his defence. The Enquiry Officer submitted his report dated 29-03-2008. Relying that report, the Disciplinary Authority inflicted punishment of compulsory retirement with super-annuation benefits *vide* his order dated 05-06-2008. Punishment was unjustified. He sent notice of demand requesting withdrawal of the punishment order, but to no avail. He claims that punishment order dated 5-06-2008 may be set aside and he may be reinstated in services of the bank with continuity and full back wages.

6. Claim was demurred by the bank, pleading that punishment awarded to the claimant was in consonance with the provisions of bipartite settlements applicable to Shri Dabas. Since the claimant had not preferred an appeal against the punishment order, order dated 05-06-2008 attained finality and cannot be questioned now.

7. Bank pleads that the claimant was involved in theft of a Nokia mobile set from its Head Office. Theft took place on 13-11-2007. Claimant was suspended and served with a chargesheet. Reply to that chargesheet was found to be unsatisfactory. Departmental enquiry was constituted. The Enquriy Officer gave all opportunities to the claimant to present his case, cross examine the witnesses of the bank and to examine witnesses in his defence. Enquiry Officer submitted his report dated 29-03-2008. After giving an opportunity to make submissions on that report, show cause notice of proposed punishment was served on the claimant. Opportunity of personal hearing was given and thereafter punishment of compulsory retirement with superannuation benefits was awarded to him, *vide* order dated 05-06-2008. Bank projects that punishment awarded to the claimant commensurate to the gravity of the charges proved against him. It has been claimed that the case projected by Shri Dabas may be discarded and award may be passed in favour of the bank.

8. On pleadings of the parties, following issues were settled :

(1) Whether enquiry conducted by the management was fair, just and proper?

(2) Whether punishment awarded to the claimant was proportionate to his misconduct?

(3) As in terms of reference.

(4) Relief.

9. Issue No. (1) was treated as preliminary issue. On consideration of evidence adduced by the claimant as well as Shri M.K. Ray, Enquriy Officer, besides submissions made by representatives of the parties, preliminary issue was answered in favour of the bank and against the claimant, *vide* order dated 14-07-2011.

10. Arguments on proportionality of punishment were heard. Shri D.M. Sharma, authorized representative, advanced arguments on behalf of the claimant. Ms. Surabhi Rana, authorized representative, raised submissions on behalf of the bank. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 2 & 3

11. Facts, highlighted by the Enquiry Officer in his report dated 29-3-2008, make it apparent that the claimant was involved in an offence of theft of a mobile phone of the guest, who had come to meet the Chairman and Managing Director of the bank. Involvement in offence of theft by an employee is a serious misconduct which tarnishes the image of the employer. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed to by this Tribunal? Right of an employer to inflict punishment of discharge or dismissal is not unfattered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding

that the order of dismissal was too severe and was not commensurative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [1963 (I) LLJ 291] that where order of punishment was shrockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization of unfair labour practice whcih would vitiate order of dismissal or discharge. But by enacting the provision of Section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is not the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

12. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. [1965(I) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (I) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

13. In B.M. Patil [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

14. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh [1984 Lab.I.C. 817]. The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994(II) LLJ 332].Thus it is evident that the Tribunal has now juridiction and power of substituting its own

measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge of dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, fist is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

15. In Bharat Heavy Electicals Ltd. [2005(2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional gurantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in C.M.C. Hospital Employees Union [1987 (4) S.C.C. 691] wherein it was held that "Section 11-A cannot be conisidered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In Hombe Gowde Educational Trust (2006 (1) S.C.C. 430) the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

16. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lessar punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was snot justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa (1995(I) LLJ 960).

17. In the light of above legal propositions, now it would be considered as to whether punishment awarded to the claimant is harsh. The claimant was awarded punishment of dismissal from service of the bank. He committed an act, which is a serious misconduct. Bank cannot repose confidence in such an employee. In case such an employee if retained in the service, he is likely to tarnish the image of the bank and cause damage to its reputation. By such acts he creates circumstances before the authorities to loss confidence in him. An employee, who is involved in theft, cannot be retained in service. Punishment awarded to the claimant cannot be said to shockingly disproportionate, malafide or an act of victimization by the bank. Punishment awarded to the claimant is found to be proportionate to his misconduct. Hence punishment, awarded in the matter, does not call for any interference. Hence it is concluded that the act of the bank in awarding above punishment is not only legal but justified also. Issues are, accordingly, answered in favour of the bank and against the claimant.

Issue No. 4

18. Punishment awarded by the bank commensurate to the misconduct committed by the claimant. The Tribunal finds no case to interfere with the punishment awarded to the claimant, as it is neither found to be shockingly disproportionate to his misconduct, nor amounts to victimisation nor unfair labour practice on the part of the bank. Consequently it is concluded that the claimant is not entitled to any relief. His claim statement, being devoid of merits, is rejected.

An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 31-07-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 28 अगस्त, 2012

का. आ. 2996.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोर कमांडेन्ट, हैडक्वाटर 12 कोर, 56 ए.पी.ओ. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर के पंचाट (संदर्भ संख्या 04/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2012 को प्राप्त हुआ था।

[सं. एल-14012/04/2008-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 2996.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Case No. 04/2008) of the Industrial Tribunal-cum-Labour Court, Jodhpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Core Commandant, Headquarters 12 Corps, 56 APO and their workman, which was received by the Central Government on 28-08-2012.

[No. L-14012/04/2008-IR(DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद् अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी:— श्री एच. आर. नागौरी, आर. एच. जे. एस.
औद्योगिक विवाद (केन्द्रीय) संख्या:— 4, सन् 2008

श्री राजेन्द्र कुमार पुत्र श्री बाबूलाल जी जाति हरिजन निवासी बाल्मिकी कोलोनी, हरिजन बस्ती, जैसलमेर

....प्रार्थी

बनाम

1. कोर कमाण्डेन्ट, हैड क्वाटर 12, कोर-56 ए.पी.ओ.

2. स्टेशन मास्टर, स्टेशन हैड क्वाटर (आर्मी), जैसलमेर

...अप्रार्थीगण

उपस्थिति:—

(1) प्रार्थी के प्रतिनिधि-श्री के. एल. चौहान, उपस्थित

(2) अप्रार्थीगण के प्रतिनिधि श्रीमति शशिलता मित्तल, उपस्थित

अधिनिर्णय

दिनांक:— 10-07-2012

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल. 14012/4/2008-आई.आर. (डी.यू.) नई दिल्ली दिनांक 6-6-2008 के द्वारा निम्न विवाद् अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:—

"Whether the action of the management of Core Commandant H.Q. 12 Corps, 56 A.P.O., in terminating the services of their workman Shri Rajendra Kumar w.e.f. 09-02-2005 is legal and justified? If not, what relief the workman is entitled to?"

2. प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि प्रार्थी श्रमिक को नियमित कर्मचारी के रूप में सफाई वाला के पद पर अप्रार्थी नियोजक के यहां दिनांक 4 फरवरी, 1997 को नियुक्त किया गया। प्रार्थी ने बिना किसी व्यवधान के लगातार कार्य किया। अप्रार्थी नियोजक ने दिनांक 9-2-2005 को प्रार्थी श्रमिक की सेवाएं जुबानी आदेश से समाप्त कर दी। प्रार्थी श्रमिक की सेवाएं स्थाई तथा लगातार थी। प्रार्थी श्रमिक की सेवाएं समाप्त करने के पूर्व प्रार्थी श्रमिक को एक माह का नोटिस अथवा नोटिस की एवज में एक माह का वेतन अथवा मुआवजा अदा नहीं किया। प्रार्थी श्रमिक की सेवा समाप्ति की सूचना निर्धारित फार्म में भी नहीं दी।

3. प्रार्थी श्रमिक ने अपने मांग-पत्र में आगे यह उल्लेख किया है कि उसकी सेवा समाप्ति के समय प्रार्थी जैसे काम करने वाले श्रमिकों की कोई वरीयता सूची अप्रार्थी ने जारी नहीं की। प्रार्थी श्रमिक की सेवा समाप्ति के समय वरिष्ठता का ध्यान नहीं रखा गया तथा पहले आया तथा बाद में गया के सिद्धांत की पालनां नहीं की गई। प्रार्थी श्रमिक से कनिष्ठ कर्मचारी अभी भी अप्रार्थी नियोजक के यहां सेवा में हैं। प्रार्थी श्रमिक की छंटनी करने के पश्चात् अप्रार्थी नियोजक द्वारा अन्य श्रमिकों को नियुक्ति प्रदान की गई, लेकिन प्रार्थी को सेवा में पुनर्स्थापित करने का कोई अवसर नहीं दिया गया। प्रार्थी को उसकी सेवा समाप्ति का कोई कारण नहीं बताया गया। प्रार्थी ने यह उल्लेख किया है कि उसकी सेवा समाप्ति औद्योगिक विवाद् अधिनियम की धारा 25-एफ, 25-जी तथा 25-एच के प्रावधानों के विपरित है।

4. प्रार्थी ने अपने मांग-पत्र में आगे यह उल्लेख किया है कि प्रार्थी ने अपनी सेवा समाप्ति के सम्बन्ध में अप्रार्थी संख्या-1 तथा 2 के समक्ष कई प्रतिवेदन दिये तथा उसने कई बार मौखिक रूप से भी अपने को पुन: सेवा में लिये जाने का निवेदन किया, लेकिन उसकी मांग नहीं मानी गई। अप्रार्थी नियोजक ने उसके प्रतिवेदन पर कोई गौर नहीं किया। प्रार्थी ने अपने अधिवक्ता के माध्यम से एक विधिक नोटिस भी दिनांक 25-4-2005 अप्रार्थी को दिया, लेकिन कोई कार्यवाही नहीं की गई। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी नियोजक में प्रार्थी श्रमिक का तीन माह का वेतन भी बकाया है। उक्त आधारों पर प्रार्थी ने यह प्रार्थना की है कि उसकी सेवा समाप्ति के आदेश को निरस्त किया जावे तथा उसे अप्रार्थी की सेवा में पूर्ववत पुन: बहाल किया जावे। उसकी सेवा को निरन्तर माना जावे तथा बीच की अवधि का पूरा वेतन एवं बकाया तीन माह का वेतन भी उसे दिलाया जावे।

5. अप्रार्थीगण ने अपने प्रत्युत्तर में यह उल्लेख किया है कि इस प्रकरण पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते हैं। अप्रार्थीगण का विभाग केन्द्रीय सरकार का उपक्रम है। यह सेना अधिनियम, 1950 से शासित होता है। प्रार्थी ने यह उल्लेख किया है कि औद्योगिक विवाद अधिनियम, 1947 की धारा 2(ध) के परन्तुक में स्पष्ट रूप से यह प्रावधान किया गया है कि वायु सेना अधिनियम, 1950

तथा सेना अधिनयम 1950 तथा नौसेना अधिनियम, 1957 के अधीन कार्यरत् कर्मचारी तथा श्रमिक पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते हैं। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी विभाग पर सेना अधिनियम, 1950 के प्रावधान लागू होते हैं।

6. अप्रार्थीण ने यह उल्लेख किया है कि यह तथ्य असत्य है कि प्रार्थी को दिनांक 4-2-1997 को अप्रार्थीगण द्वारा कोई नियुक्ति दी गई। अप्रार्थीगण ने यह उल्लेख किया है कि वास्तविक तथ्य यह है कि प्रार्थी को दैनिक मजदूरी या निश्चित मानदेय पर अस्थाई तौर पर अप्रार्थीगण के परिसर की साफ-सफाई हेतु प्रिंसीपल कन्ट्रोलर ऑफ डिफेन्स एकाउन्टस पूना की स्वीकृति के पश्चात् कार्य पर लगाया गया था। इस तथ्य को अस्वीकार किया है कि प्रार्थी द्वारा लगातार बिना किसी व्यवधान के कार्य किया गया। अप्रार्थीगण द्वारा आवश्यकता होने के कारण प्रार्थी से निश्चित मानदेय या मजदूरी पर समय-समय पर कार्य लिया गया। अप्रार्थीगण ने यह उल्लेख किया है कि प्रार्थी की सेवा समाप्त नहीं की गई बल्कि मुख्यालय का यह निर्देश था कि दैनिक मजदूरी पर कार्यरत् श्रमिकों का कार्य समाप्त कर दिया गया है। मुख्यालय द्वारा इस प्रकार के कार्यों की स्वीकृति नहीं दी गई अत: दैनिक श्रमिकों से कार्य लेना बन्द कर दिया गया। यह तथ्य गलत बताया है कि प्रार्थी की सेवाएं स्थाई तथा लगातार थी। आर्मी नियम, 1950 के तहत इस प्रकार की नियुक्तियों का कोई प्रावधान नहीं है। स्थाई प्रकृति की नियुक्ति हेतु आर्मी नियम, 1950 के अर्न्तगत निर्दिष्ट प्रावधानों के तहत ही स्थाई नियुक्ति दी जाती है। यदि प्रार्थी द्वारा लम्बी अवधि तक कार्य किया भी गया है तब भी इस प्रकरण पर औद्योगिक विवाद् अधिनियम के प्रावधान लागू नहीं होते हैं। इसी आधार पर यह उल्लेख किया है कि प्रार्थी के संबंध में छंटनी मुआवजा के प्रावधान लागू नहीं होते हैं। प्रार्थी को किसी प्रकार का नोटिस अथवा नोटिस की एवज में एक माह का अग्रिम वेतन दिये जाने की आवश्यकता नहीं थी। प्रार्थी द्वारा किये जा रहे कार्य की प्रकृति तथा आर्मी एक्ट, 1950 के अन्तर्गत प्रार्थी के मामले में औद्योगिक विवाद् अधिनियम के प्रावधानों की पालना किया जाना आवश्यक नहीं था।

7. अप्रार्थीगण ने मांग-पत्र के अन्य तथ्यों को भी अस्वीकार किया है तथा यह उल्लेख किया है कि अप्रार्थीगण द्वारा किसी नये कर्मचारी को नियुक्त नहीं किया गया। यह भी उल्लेख किया गया है कि प्रार्थी द्वारा अप्रार्थी को कोई प्रतिवेदन नहीं दिया गया और न ही कभी कोई निवेदन किया गया। अप्रार्थीगण ने प्रार्थी के अधिवक्ता के मार्फत नोटिस प्राप्त होना स्वीकार किया है, लेकिन यह उल्लेख किया है कि प्रार्थी पुन: नियुक्ति प्राप्त करने का अधिकारी नहीं था। अप्रार्थीगण ने यह उल्लेख किया है कि जहां तक प्रार्थी को परिचय-पत्र जारी करने का सवाल है तो स्थिति यह है कि अप्रार्थीगण का विभाग प्रोटेक्टेड एरिया में आता है और यहां विभाग देश की सुरक्षा से जुड़ा हुआ है अत: अप्रार्थी विभाग के परिसर में कोई आम-जन बिना स्वीकृति के प्रवेश नहीं कर सकता है। प्रार्थी अप्रार्थी विभाग में सफाई कर्मी के तौर पर कार्य करता था और उसे प्रति दिन सफाई हेतु इस परिसर में आना होता था अत: उसे सफाई हेतु विभाग ने परिचय-पत्र जारी किया था। परिचय-पत्र जारी करने से प्रार्थी यह दावा नहीं कर सकता है कि वह विभाग का नियमित कर्मचारी था। प्रार्थी को मेडिकल सुविधाएं सेना के द्वारा केवल मानवता के नाते प्रदान की गई थी। प्रार्थी की किसी प्रकार की कोई राशि बकाया नहीं है। उक्त आधारों पर अप्रार्थीगण ने प्रार्थी के मांग-पत्र को निरस्त करने की प्रार्थना की।

8. प्रार्थी ने अपने मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्रार्थी पी.डब्ल्यू.-1 श्री राजेन्द्र कुमार से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में श्रम आयुक्त के समक्ष प्रस्तुत प्रार्थना-पत्र की प्रति प्रदर्श-1, परिचय-पत्र प्रदर्श-2, परिचय-पत्र प्रदर्श-3, प्रमाण-पत्र प्रदर्श-4, स्वास्थ्य प्रमाण-पत्र प्रदर्श-5, नोटिस की प्रति प्रदर्श-6, पोस्टल रसीद तथा प्राप्ति रसीद प्रदर्श-7 को पेश कर प्रदर्श करवाये गये। अप्रार्थीगण की ओर से प्रार्थी राजदेव का शपथ-पत्र प्रस्तुत किया गया, लेकिन पर्याप्त अवसर दिये जाने के बावजूद इस साक्षी को प्रतिपरीक्षा हेतु साक्ष्य में उपस्थित नहीं रखा गया।

9. बहस उभय-पक्ष सुनी गई। पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है।

10. धारा 2 (एस) में कर्मकार की परिभाषा दी गई है तथा इसके अन्तर्गत वायु सेना अधिनियम, 1950, आर्मी अधिनियम, 1950 तथा नौसेना अधिनियम 1957 से शासित व्यक्ति इस परिभाषा में सम्मिलित नहीं किया गया है। विद्वान प्रतिनिधि अप्रार्थीगण की प्रारम्भिक आपत्ति यह रही है कि प्रार्थी ने यह बताया है कि उसकी नियुक्ति अप्रार्थी संख्या-1 कोर कमाण्डेन्ट तथा स्टेशन कमाण्डेन्ट द्वारा की गई है। विद्वान प्रतिनिधि अप्राथीगण का यह तर्क है कि इस प्रकार प्रार्थी के अनुसार प्रार्थी आर्मी का कर्मचारी है। विद्वान प्रतिनिधि अप्रार्थीगण का इस आधार पर यह मानना है कि प्रार्थी पर आर्मी अधिनियम, 1950 के प्रावधान लागू होते हैं और औद्योगिक विवाद् अधिनियम की धारा 2-एस के प्रावधानों के अनुसार जिस कर्मचारी पर आर्मी अधिनियम के प्रावधान लागू होते हैं, वहां ऐसी कर्मचारी औद्योगिक विवाद् अधिनियम की धारा 2-एस के अर्न्तगत कर्मकार की परिभाषा में नहीं आता है और ऐसी स्थिति में उस पर औद्योगिक विवाद् अधिनियम के प्रावधान लागू नहीं होते हैं। विद्वान प्रतिनिधि अप्रार्थीगण का यह तर्क है कि प्रमाण-पत्र प्रदर्श-4 के अनुसार प्रार्थी प्रतिरक्षा मंत्रालय के अन्तर्गत एक सिविल पोस्ट धारित करता है। प्रार्थी को भारत सरकार के कन्सोलिडेटेड फण्ड से वेतन दिया जाता था। विद्वान प्रतिनिधि अप्रार्थीगण का इन आधारों पर यह मानना है कि प्रार्थी का यह मामला चलने योग्य नहीं है।

11. उक्त तर्कों के विपरीत विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि अप्रार्थीगण की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है। अप्रार्थीगण की ओर से एक साक्षी का शपथ-पत्र प्रस्तुत किया गया था, लेकिन उस साक्षी को प्रतिपरीक्षा हेतु साक्ष्य में उपस्थित नहीं रखा गया अत: उस साक्षी का शपथ-पत्र साक्ष्य में पढ़ने योग्य नहीं है। विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि यह तथ्य प्रमाणित करने का भार अप्रार्थीगण पर था कि प्रार्थी प्रतिरक्षा मंत्रालय के अन्तर्गत एक सिविल पोस्ट धारित करता था तथा उसे किसी लोक कोष (पब्लिक फण्ड) अथवा कन्सोलिडेटेड फण्ड से वेतन दिया जाता था। अप्रार्थीगण ने ऐसा कोई तथ्य प्रमाणित नहीं किया है। अप्रार्थीगण के किसी साक्षी के साक्ष्य में प्रस्तुत नहीं होने से प्रार्थी उक्त तथ्यों के सम्बन्ध में अप्रार्थीगण के साक्षी से प्रतिपरीक्षा करने के अपने अधिकार से भी वंचित रहा है। प्रार्थी

केवल आर्मी हैड क्वार्टर के परिसर में सफाई कार्य करने वाला कर्मचारी मात्र था। प्रार्थी को रेजीमेन्टल फण्ड से वेतन दिया जाता था। यह रेजीमेन्टल फण्ड पब्लिक फण्ड नहीं है। रेजीमेन्टल फण्ड से किसी सफाई कर्मचारी को कोई वेतन दिया जाता है तो कर्मचारी के सम्बन्ध में यह नहीं माना जा सकता कि वह मिनिस्ट्री ऑफ डिफेन्स में कोई सिविल पोस्ट धारित करता है। इन आधारों पर विद्वान प्रतिनिधि प्रार्थी का यह मानना है कि प्रार्थी पर आर्मी अधिनियम, 1950 के प्रावधान लागू नहीं होते हैं। प्रार्थी की सेवाएं औद्योगिक विवाद् अधिनियम, 1947 से प्रावधानों से ही शासित होती है। विद्वान प्रतिनिधि प्रार्थी ने अपने इन तर्कों की पुष्टि में एक विधिक दृष्टांत Union of India and Another Vs. Chotelal and Other (1999) 1 Supreme Court Cases Page 554 माननीय न्यायालय ने इस विधि दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है:—

> " Service Law-Administrative Tribunals Act, 1985-S.14(1)(a)-Civil Post-Dhobis appionted to wash the clothers of cadets at NDA, Khadakwasle and being paid from Regimental Fund-Held, Regimental Fund not a 'public fund' as defined in para 801 of Defence Sevices Regulation and dhobis paid out of Regimental Fund cannot be treated as holders of civil posts within the Ministry of Defence so as to confer jurisdiction of CAT to issue directions relating to their service conditions—Although Commanding Officer exercise some control over such dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such posts is made from out of the Consolidated Fund of India or of any public fund under the control of the Ministry of Defence. Defence Services Regulation, Paras 801 and 820(a)".

12. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया। प्रार्थी ने अपने शपथ-पत्र में स्पष्ट रूप से उल्लेख किया है कि उसपर औद्योगिक विवाद् अधिनियम, 1947 के प्रावधान लागू होते हैं। यद्यपि अप्रार्थीगण की ओर से एक साक्षी प्रार्थी राजदेव का शपथ-पत्र प्रस्तुत किया गया है, लेकिन इस साक्षी को प्रतिपरीक्षा हेतु साक्ष्य में प्रस्तुत नहीं किया गया है और ऐसी स्थिति में इस साक्षी के शपथ-पत्र में उल्लेख किये गये तथ्य साक्ष्य में ग्राहय नहीं हैं। अप्रार्थीगण की ओर से किसी साक्षी को साक्ष्य में पेश नहीं करने के कारण प्रार्थी अप्रार्थीगण के साक्षियों से प्रतिपरीक्षा करने के महत्वपूर्ण अधिकार से वंचित रहा है। यदि अप्रार्थीगण का साक्षी साक्ष्य में प्रस्तुत होता तो यह स्थिति स्पष्ट होती कि प्रार्थी को वेतन किस प्रकार दिया जा रहा था। प्रार्थी उस साक्षी से यह जिरह कर सकता था कि आया उसे किसी रेजीमेन्टल फण्ड से वेतन दिया जा रहा था अथवा नहीं। यदि अप्रार्थीगण की ओर से साक्ष्य प्रस्तुत होती तो यह निष्कर्ष निकालने में सुविधा होती कि प्रार्थी मिनिस्ट्री ऑफ डिफेन्स में सिविल पोस्ट धारित करता है अथवा नहीं। प्रमाण-पत्र प्रदर्श-4 में प्रार्थी की पोस्ट सिविल कन्जरवेन्सी सफाई वाला अंकित की गई है। अप्रार्थीगण की ओर से कोई साक्ष्य प्रस्तुत नहीं होने से यह नहीं माना जा सकता कि प्रार्थी को भारत सरकार के कन्सोलिडेटेड फण्ड से वेतन दिया जा रहा था। यह निष्कर्ष भी नहीं निकाला जा सकता है कि प्रार्थी को किसी पब्लिक फण्ड से वेतन दिया जा रहा था। प्रार्थी केवल सफाई वाला कर्मचारी था और ऐसी स्थिति में हमारी राय में यह नहीं माना जा सकता कि प्रार्थी भारत सरकार की मिनिस्ट्री ऑफ डिफेन्स में कोई सिविल पोस्ट धारित करता था। हमारी राय में प्रार्थी की सिविल पोस्ट ऐसी नहीं थी, जिसके आधार पर यह माना जा सके कि उसे भारत सरकार के कन्सोलिडेटेड फण्ड अथवा किसी पब्लिक फण्ड से वेतन दिया जाता था। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में अप्रार्थीगण यह तथ्य प्रमाणित करने में असफल रहे हैं कि प्राथी पर आर्मी अधिनियम, 1950, नोसैना अधिनियम, 1957 अथवा वायु सेना अधिनियम, 1950 के प्रावधान लागू होते हैं। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी पर औद्योगिक विवाद् अधिनियम, 1947 के प्रावधान लागू होते हैं।

13. अप्रार्थीगण की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है। प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि उसने अप्रार्थीगण के यहां 4 फरवरी 1997 से निरन्तर दिनांक 9-2-2005 तक कार्य किया है। अप्रार्थीगण ने मांग-पत्र के प्रत्युत्तर में यह तथ्य को स्पष्ट रूप से अस्वीकार नहीं किया है। अप्रार्थीगण के प्रत्युत्तर से यह स्पष्ट होता है कि अप्रार्थीगण ने उक्त तथ्य को स्वीकार ही किया हैं इस प्रकार प्रार्थी ने सात वर्ष तक निरन्तर सेवा की है। हमारी राय में प्रार्थी की औद्योगिक विवाद् अधिनियम की धारा 25-बी(1) के अनुसार निरन्तर सेवा प्रमाणित होती है। पत्रावली पर यह साक्ष्य नहीं है कि प्रार्थी की सेवा समाप्त करने के पूर्व अप्रार्थीगण ने औद्योगिक विवाद् अधिनियम की धारा 25-एफ के प्रावधानों की पालना की। अतः प्रार्थी की सेवा समाप्ति अनुचित तथा अवैध प्रमाणित होती है।

14. अब हमें यह देखना है कि प्रार्थी क्या अनुतोष प्राप्त करने का अधिकारी है। प्रार्थी ने अप्रार्थीगण के यहां करीब सात वर्ष तक निरन्तर सेवा की हैं प्रार्थी की वर्तमान में आयु करीब 37-38 वर्ष हो गई है। ऐसी स्थिति में प्रार्थी को अन्य कोई रोजगार मिलने की सम्भावना कम है, अतः समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी को उसकी सेवा की निरन्तरता में सेवा में पुनर्स्थापित किया जाना अपेक्षित है। समस्त परिस्थितियों पर सावधानीपूर्व विचार करने के पश्चात् प्रार्थी उसकी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित किये जाने तक की अवधि के वेतन की 30 प्रतिशत राशि पूर्वभृति के रूप में प्राप्त करने का अधिकारी है।

आदेश

15. अतः यह अधिनिर्णित किया जाता हैं कि:—

(1) अप्रार्थी नियोजक कोर कमाण्डेन्ट हैड क्वार्टर-12, कोर 56, ए.पी.ओ. तथा स्टेशन मास्टर, स्टेशन हैड क्वार्टर (आर्मी) जैसलमेर द्वारा प्रार्थी श्री राजेन्द्र कुमार पुत्र बाबुलाल को

दिनांक 9-2-2005 से सेवापृथक करना अनुचित तथा अवैध है।

(2) अप्रार्थी नियोजक प्रार्थी श्री राजेन्द्र कुमार पुत्र बाबुलाल को तुरन्त सेवा में पुर्नस्थापित करे। प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक निरन्तर मानी जायेगी।

(3) प्रार्थी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक की अवधि के वेतन की 30 प्रतिशत राशि पूर्वभृति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 28 अगस्त, 2012

का.आ. 2997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोर कमाडेन्ट, हैडक्वार्टर 12 कोर, 56 ए.पी.ओ. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जोधपुर के पंचाट (संदर्भ संख्या 05/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2012 को प्राप्त हुआ था।

[सं. एल-14012/06/2008-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 2997.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the awared (Ref. Case No. 05/2008) of the Industrial Tribunal-cum-Labour Court, Jodhpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Core Commandant, Headquarters 12 Corps, 56 APO their workman, which was received by the Central Government on 28-08-2012.

[No. L-14012/06/2008-IR(DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी: श्री एच.आर. नागौरी, आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) संख्या: 5 सन 2008

श्री राकेश कुमार पुत्र श्री चनणाराम जी, जाति हरिजन, निवासी मजदूर पाड़ा मस्जिद के पास, वार्ड नम्बर-11, जैसलमेर।

...प्रार्थी

बनाम

1. कोर कमाण्डेन्ट, हैडक्वार्टर 12, कोर-56 ए.पी.ओ.

2. स्टेशन मास्टर, स्टेशन हैडक्वार्टर (आर्मी), जैसलमेर।

...अप्रार्थीगण

उपस्थिति:-

(1) प्रार्थी के प्रतिनिधि—श्री के.एल.चौहान उपस्थित।

(2) अप्रार्थीगण के प्रतिनिधि श्रीमति शशिलता मित्तल उपस्थित।

अधिनिर्णय

दिनांक 10-07-2012

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल-14012/6/2008-आई.आर. (डी.यू.) नई दिल्ली दिनांक 11-6-2008 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:-

"Whether the action of the management of Core Commandant H.Q., 12 Corps, 56 A.P.O., in terminating the services of their workman Shri Rakesh Kumar w.e.f., 09-02-2005 is legal and justified? If not, what relief the workman is entitled to?"

2. प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि प्रार्थी श्रमिक को नियमित कर्मचारी के रूप में सफाई वाला के पद पर अप्रार्थी नियोजक के यहां दिनांक 6 जनवरी, 1997 को नियुक्त किया गया। प्रार्थी ने बिना किसी व्यवधान के लगातार कार्य किया। अप्रार्थी नियोजक ने दिनांक 9-2-2005 को प्रार्थी श्रमिक की सेवाएं जुबानी आदेश से समाप्त कर दी। प्रार्थी श्रमिक की सेवाएं स्थाई तथा लगातार थी। प्रार्थी श्रमिक की सेवाएं समाप्त करने के पूर्व प्रार्थी श्रमिक को एक माह का नोटिस अथवा नोटिस की एवज में एक माह का वेतन अथवा मुआवजा अदा नहीं किया। प्रार्थी श्रमिक की सेवा समाप्ति की सूचना निर्धारित फार्म में भी नहीं दी।

3. प्रार्थी श्रमिक ने अपने मांग-पत्र में आगे यह उल्लेख किया है कि उसकी सेवा समाप्ति के समय प्रार्थी जैसे काम करने वाले श्रमिकों की कोई वरीयता सूची अप्रार्थी ने जारी नहीं की। प्रार्थी श्रमिक की सेवा समाप्ति के समय वरिष्ठता का ध्यान नहीं रखा गया तथा पहले आया तथा बाद में गया के सिद्धांत की पालना नहीं की गई। प्रार्थी श्रमिक से कनिष्ठ कर्मचारी अभी भी अप्रार्थी नियोजक के यहां सेवा में हैं। प्रार्थी श्रमिक की छंटनी करने के पश्चात् अप्रार्थी नियोजक द्वारा अन्य श्रमिकों को नियुक्ति प्रदान की गई, लेकिन प्रार्थी को सेवा में पुर्नस्थापित करने का कोई अवसर नहीं दिया गया। प्रार्थी को उसकी सेवा समाप्ति का कोई कारण नहीं बताया गया। प्रार्थी ने यह उल्लेख किया है कि उसकी सेवा समाप्ति औद्योगिक विवाद अधिनियम की धारा 25-एफ, 25-जी तथा 25-एच के प्रावधानों के विपरित है।

4. प्रार्थी ने अपने मांग-पत्र में आगे यह उल्लेख किया है कि प्रार्थी ने अपनी सेवा समाप्ति के संबंध में अप्रार्थी संख्या-1 तथा 2 के समक्ष कई प्रतिवेदन दिये तथा उसने कई बार मौखिक रूप से भी अपने को पुन: सेवा में लिये जाने का निवेदन किया, लेकिन उसकी मांग नहीं मानी गई। अप्रार्थी नियोजक ने उसके प्रतिवेदन पर कोई गौर नहीं किया। प्रार्थी ने अपने अधिवक्ता के माध्यम से एक विधिक नोटिस भी दिनांक 25-4-2005 अप्रार्थी को दिया, लेकिन कोई कार्यवाही नही की गई। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी नियोजक में प्रार्थी श्रमिक का तीन माह का वेतन भी बकाया है। उक्त आधारों पर प्रार्थी ने यह प्रार्थना

की है कि उसकी सेवा समाप्ति के आदेश को निरस्त किया जावे तथा उसे अप्राथी की सेवा में पूर्ववत पुन: बहाल किया जावे। उसकी सेवा को निरन्तर माना जावे तथ बीच की अवधि का पूरा वेतन एवं बकाया तीन माह का वेतन भी उसे दिलाया जावे।

5. अप्रार्थीगण ने अपने प्रत्युत्तर में यह उल्लेख किया है कि इस प्रकरण पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते हैं । अप्रार्थीगण का विभाग केन्द्रीय सरकार का उपक्रम है। यह सेना अधिनियम 1950 से शासित होता है। प्रार्थी ने यह उल्लेख किया है कि औद्योगिक विवाद अधिनियम, 1947 की धारा 2(ध) के परन्तुक में स्पष्ट रूप से यह प्रावधान किया गया है कि वायु सेना अधिनियम, 1950 तथा सेना अधिनियम, 1950 तथा नौसैना अधिनियम, 1957 के अधीन कार्यरत् कर्मचारी तथा श्रमिक पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते हैं। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी विभाग पर सेना अधिनिमय, 1950 के प्रावधान लागू होते हैं।

6. अप्रार्थीगण ने यह उल्लेख किया है कि यह तथ्य असत्य है कि प्रार्थी को दिनांक 6-11-1997 को अप्रार्थीगण द्वारा कोई नियुक्ति दी गई। अप्रार्थीगण ने यह उल्लेख किया है कि वास्तविक तथ्य यह है कि प्रार्थी को दैनिक मजदूरी या निश्चित मानदेय पर अस्थाई तौर पर अप्रार्थीगण के परिसर की साफ सफाई हेतु प्रिंसीपल कन्ट्रोलर ऑफ डिफेन्स एकाउन्ट्स पूना की स्वीकृति के पश्चात् कार्य पर लगाया गया था। इस तथ्य को अस्वीकार किया है कि प्रार्थी द्वारा लगातार बिना किसी व्यवधान के कार्य किया गया। अप्रार्थीगण द्वारा आवश्यकता होने के कारण प्रार्थी से निश्चित मानदेय या मजदूरी पर समय-समय पर कार्य लिया गया। अप्रार्थीगण ने यह उल्लेख किया है कि प्रार्थी की सेवा समाप्त नहीं की गई बल्कि मुख्यालय का यह निर्देश था कि दैनिक मजदूरी पर कार्यरत् श्रमिकों का कार्य समाप्त कर दिया गया है। मुख्यालय द्वारा इस प्रकार के कार्यों की स्वीकृति नहीं दी गई । अत: दैनिक श्रमिकों से कार्य लेना बन्द कर दिया गया। यह तथ्य गलत बताया है कि प्रार्थी की सेवाएं स्थाई तथा लगातार थीं। आर्मी नियम 1950 के तहत इस प्रकार की नियुक्तियों का कोई प्रावधान नहीं है। स्थाई प्रकृति की नियुक्ति हेतु आर्मी नियम 1950 के अन्तर्गत निर्दिष्ट प्रावधानों के तहत की स्थाई नियुक्ति दी जाती है। यदि प्रार्थी द्वारा लम्बी अवधि तक कार्य किया भी गया है तब भी इस प्रकरण पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। इसी आधार पर यह उल्लेख किया है कि प्रार्थी के संबंध में छंटनी मुआवजा के प्रावधान लागू नहीं होते हैं। प्रार्थी को किसी प्रकार का नोटिस अथवा नोटिस की एवज में एक माह का अग्रिम वेतन दिये जाने की आवश्यकता नहीं थी। प्रार्थी द्वारा किये जा रहे कार्य की प्रकृति तथा आर्मी एक्ट 1950 के अन्तर्गत प्रार्थी के मामले में औद्योगिक विवाद अधिनियम के प्रावधानों की पालना किया जाना आवश्यक नहीं था।

7. अप्रार्थीगण ने मांग-पत्र के अन्य तथ्यों को भी अस्वीकार किया है तथा यह उल्लेख किया है कि अप्रार्थीगण द्वारा किसी नये कर्मचारी को नियुक्त नहीं किया गया। यह भी उल्लेख किया गया है कि प्रार्थी द्वारा अप्रार्थी को कोई प्रतिवेदन नहीं दिया गया और न ही कभी कोई निवेदन किया गया। अप्रार्थीगण ने प्रार्थी के अधिवक्ता के मार्फत नोटिस प्राप्त होना स्वीकार किया है, लेकिन यह उल्लेख किया है कि प्रार्थी पुन: नियुक्ति प्राप्त करने का अधिकारी नहीं था। अप्रार्थीगण ने यह उल्लेख किया है कि जहां तक प्रार्थी को परिचय-पत्र जारी करने का सवाल है तो स्थिति यह है कि अप्रार्थीगण का विभाग प्रोटेक्टेड एरिया में आता है और यह विभाग देश की सुरक्षा से जुड़ा हुआ है। अत: अप्रार्थी विभाग के परिसर में कोई आम-जन बिना स्वीकृति के प्रवेश नहीं कर सकता है। प्रार्थी अप्रार्थी विभाग में सफाई कर्मी के तौर पर कार्य करता था और उसे प्रतिदिन सफाई हेतु इस परिसर में आना होता था अत: उसे सफाई हेतु विभाग ने परिचय-पत्र जारी किया था। परिचय-पत्र जारी करने से प्रार्थी यह दावा नहीं कर सकता है कि वह विभाग का नियमित कर्मचारी था। प्रार्थी को मेडिकल सुविधाएं सेना के द्वारा केवल मानवता के नाते प्रदान की गई थी। प्रार्थी की किसी प्रकार की कोई राशि बकाया नहीं है। उक्त आधारों पर अप्रार्थीगण ने प्रार्थी के मांग-पत्र को निरस्त करने की प्रार्थना की।

8. प्रार्थी ने अपने मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्रार्थी पी. डब्ल्यू-1 श्री राकेश कुमार से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में श्रम आयुक्त के समक्ष प्रस्तुत प्रार्थना-पत्र की प्रति प्रदर्श-1, परिचय-पत्र प्रदर्श-2, लगायत प्रदर्श-6, प्रमाण-पत्र प्रदर्श-7, स्वास्थ्य प्रमाण-पत्र प्रदर्श-8, पास प्रदर्श-9, नोटिस की प्रति प्रदर्श-10, पोस्टल रसीद तथा प्राप्ति रसीद प्रदर्श-11 को पेश कर प्रदर्श करवाये गये। अप्रार्थीगण की ओर से पार्थी राजदेव का शपथ-पत्र प्रस्तुत किया गया, लेकिन पर्याप्त अवसर दिये जाने के बावजूद इस साक्षी को प्रतिपरीक्षा हेतु साक्ष्य में उपस्थित नहीं रखा गया।

9. बहस उभय-पक्ष सुनी गई। पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है।

10. धारा 2(एस) में कर्मकार की परिभाषा दी गई है तथा इसके अन्तर्गत वायु सेना अधिनियम 1950, आर्मी अधिनियम 1950 तथा नौसेना अधिनियम 1957 से शासित व्यक्ति इस परिभाषा में सम्मिलित नहीं किया गया है। विद्वान प्रतिनिधि अप्रार्थीगण की प्रारम्भिक आपत्ति यह रही है कि प्रार्थी ने यह बताया है कि उसकी नियुक्ति अप्रार्थी संख्या-1 कोर कमाण्डेन्ट तथा स्टेशन कमाण्डेन्ट द्वारा की गई है । विद्वान प्रतिनिधि अप्रार्थीगण का यह तर्क है कि इस प्रकार प्रार्थी के अनुसार प्रार्थी आर्मी का कर्मचारी है। विद्वान प्रतिनिधि अप्रार्थीगण का इस आधार पर यह मानना है कि प्रार्थी पर आर्मी अधिनियम, 1950 के प्रावधान लागू होते हैं और औद्योगिक विवाद अधिनियम की धारा 2-एस के प्रावधानों के अनुसार जिस कर्मचारी पर आर्मी अधिनियम के प्रावधान लागू होते है वहां ऐसा कर्मचारी औद्योगिक विवाद अधिनियम की धारा 2-एस के अन्तर्गत कर्मकार की परिभाषा में नहीं आता है और ऐसी स्थिति में उस पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। विद्वान प्रतिनिधि अप्रार्थीगण का यह तर्क है कि प्रमाण-पत्र प्रदर्श-7 के अनुसार प्रार्थी प्रतिरक्षा मंत्रालय के अन्तर्गत एक सिविल पोस्ट धारित करता है । प्रार्थी को भारत सरकार के कन्सोलिडेटेड फण्ड से वेतन दिया जाता था। विद्वान प्रतिनिधि अप्रार्थीगण का इन आधारों पर यह मानना है कि प्रार्थी का यह मामला चलने योग्य नहीं है।

11. उक्त तर्कों के विपरीत विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि अप्रार्थीगण की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है। अप्रार्थीगण की

ओर से एक साक्षी का शपथ-पत्र प्रस्तुत किया गया था, लेकिन उस साक्षी को प्रतिपरीक्षा हेतु साक्ष्य में उपस्थित नहीं रखा गया अत: उस साक्षी का शपथ-पत्र साक्ष्य में पढ़ने योग्य नहीं है। विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि यह तथ्य प्रमाणित करने का भार अप्रार्थीगण पर था कि प्रार्थी प्रतिरक्षा मंत्रालय के अन्तर्गत एक सिविल पोस्ट धारित करता था तथा उसे किसी लोक कोष (पब्लिक फण्ड) अथवा कन्सोलिडेटेड फण्ड से वेतन दिया जाता था। अप्रार्थीगण ने ऐसा कोई तथ्य प्रमाणित नहीं किया है। अप्रार्थीगण के किसी साक्ष्य के साक्ष्य में प्रस्तुत नहीं होने से प्रार्थी उक्त तथ्यों के संबंध में अप्रार्थीगण के साक्षी से प्रतिपरीक्षा करने के अपने अधिकार से भी वंचित रहा है। प्रार्थी केवल आर्मी हैड क्वार्टर के परिसर में सफाई कार्य करने वाला कर्मचारी मात्र था। प्रार्थी को रेजीमेन्टल फण्ड से वेतन दिया जाता था। यह रेजीमेन्टल फण्ड पब्लिक फण्ड नहीं है। रेजीमेन्टल फण्ड से किसी सफाई कर्मचारी को कोई वेतन दिया जाता है तो कर्मचारी के संबंध में यह नहीं माना जा सकता कि वह मिनिस्ट्री ऑफ डिफेन्स में कोई सिविल पोस्ट धारित करता है। इन आधारों पर विद्वान प्रतिनिधि प्रार्थी का यह मानना है कि प्रार्थी पर आर्मी अधिनियम, 1950 के प्रावधान लागू नहीं होते हैं। प्रार्थी की सेवाएं औद्योगिक विवाद् अधिनियम, 1947 के प्रावधानों से ही शासित होती है। विद्वान प्रतिनिधि प्रार्थी ने अपने इन तर्कों की पुष्टि में एक विधिक दृष्टांत Union of India and Another Vs. Chotelal and Other (1999) 1 Supreme Court Cases page 554 माननीय न्यायालय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है:-

> "Service Law-Administrative Tribunals Act, 1985-S.14(1)(a)-Civil Post-Dhobis appointed to wash the clothers of cadets at NDA, Khadakwasle and being paid from Regimental Fund-Held, Regimental Fund not a 'public fund' as defined in para 801 of Defence Services Regulation and dhobis paid out of Regimental Fund cannot be treated as holders of civil posts within the Ministry of Defence so as to confer jurisdiction of CAT to issue directions relating to their service conditions—Although Commanding Officer exercises some control over such dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such posts is made from out of the Consolidated Fund of India or of any public fund under the control of the Ministry of Defence. Defence Services Regulation, Paras 801 and 820(a)".

12. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया। प्रार्थी ने अपने शपथ-पत्र में स्पष्ट रूप से उल्लेख किया है कि उस पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू होते हैं। यद्यपि अप्रार्थीगण की ओर से एक साक्षी पार्थो राजदेव का शपथ-पत्र प्रस्तुत किया गया है, लेकिन इस साक्षी को प्रतिपरीक्षा हेतु साक्ष्य में प्रस्तुत नहीं किया गया है और ऐसी स्थिति में इस साक्षी के शपथ-पत्र में उल्लेख किये गये तथ्य साक्ष्य में ग्राहय नहीं हैं। अप्रार्थीगण की ओर से किसी साक्षी को साक्ष्य में पेश नहीं करने के कारण प्रार्थी अप्रार्थीगण के साक्षियों से प्रतिपरीक्षा करने के महत्वपूर्ण अधिकार से वंचित रहा है। यदि अप्रार्थीगण का साक्षी साक्ष्य से प्रस्तुत होता तो यह स्थिति स्पष्ट होती कि प्रार्थी को वेतन किस प्रकार दिया जा रहा था। प्रार्थी उस साक्षी से यह जिरह कर सकता था कि आया उसे किसी रेजीमेन्टल फण्ड से वेतन दिया जा रहा था अथवा नहीं। यदि अप्रार्थीगण की ओर से साक्ष्य प्रस्तुत होती हो यह निष्कर्ष निकालने से सुविधा होती कि प्रार्थी मिनिस्ट्री ऑफ इण्डिया में सिविल पोस्ट धारित करता है अथवा नहीं। प्रमाण-पत्र प्रदर्श-7 में प्रार्थी की पोस्ट सिविल कन्जरवेन्सी सफाई वाला अंकित की गई है। अप्रार्थीगण की ओर से कोई साक्ष्य प्रस्तुत नहीं होने से यह नहीं माना जा सकता कि प्रार्थी को भारत सरकार के कन्सोलिडेटेड फण्ड से वेतन दिया जा रहा था। यह निष्कर्ष भी नहीं निकाला जा सकता है कि प्रार्थी को किसी पब्लिक फण्ड से वेतन दिया जा रहा था। प्रार्थी केवल सफाई वाला कर्मचारी था और ऐसी स्थिति में हमारी राय में यह नहीं माना जा सकता कि प्रार्थी भारत सरकार की मिनिस्ट्री ऑफ डिफेन्स में कोई सिविल पोस्ट धारित करता था। हमारी राय में प्रार्थी की सिविल पोस्ट ऐसी नहीं थी, जिसके आधार पर यह माना जा सके कि उसे भारत सरकार के कन्सोलिडेटेड फण्ड अथवा किसी पब्लिक फण्ड से वेतन दिया जाता था। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में अप्रार्थीगण यह तथ्य प्रमाणित करने में असफल रहे हैं कि प्रार्थी पर आर्मी अधिनियम, 1950, नौसेना अधिनियम, 1957 अथवा वायु सेना अधिनियम, 1950 के प्रावधान लागू होते हैं। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू होते हैं।

13. अप्रार्थीगण की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई है। प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि उसने अप्रार्थीगण के यहां 6 जनवरी, 1997 से निरन्तर दिनांक 9-2-2005 तक कार्य किया है। अप्रार्थीगण ने मांग-पत्र के प्रत्युत्तर में इस तथ्य को स्पष्ट रूप से अस्वीकार नहीं किया है। अप्रार्थीगण के प्रत्युत्तर से यह स्पष्ट होता है कि अप्रार्थीगण ने उक्त तथ्य को स्वीकार ही किया है। इस प्रकार प्रार्थी ने सात वर्ष तक निरन्तर सेवा की है। हमारी राय में प्रार्थी की औद्योगिक विवाद् अधिनियम की धारा 25-बी(1) के अनुसार निरन्तर सेवा प्रमाणित होती है। पत्रावली पर यह साक्ष्य नहीं है कि प्रार्थी की सेवा समाप्त करने के पूर्व अप्रार्थीगण ने औद्योगिक विवाद अधिनियम की धारा 25-एफ के प्रावधानों की पालना की। अत: प्रार्थी की सेवा समाप्ति अनुचित तथा अवैध प्रमाणित होती है।

14. अब हमें यह देखना है कि प्रार्थी क्या अनुतोष प्राप्त करने का अधिकारी है। प्रार्थी ने अप्रार्थीगण के यहां करीब सात वर्ष तक निरन्तर सेवा की है। प्रार्थी की वर्तमान में आयु करीब 38-39 वर्ष की गई है। ऐसी स्थिति में प्रार्थी को अन्य कोई रोजगार मिलने की सम्भावना कम है, अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी को उसकी सेवा की निरन्तरता में सेवा में पुनर्स्थापित किया जाना अपेक्षित है। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् प्रार्थी उसकी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित किये जाने तक की अवधि के वेतन की 30 प्रतिशत राशि पूर्वभृति के रूप में प्राप्त करने का अधिकारी है।

आदेश

15. अत: यह अधिनिर्णित किया जाता है कि:-

(1) अप्रार्थी नियोजक कोर कमाण्डेन्ट, क्वार्टर-12, कोर 56, ए.पी.ओ. तथा स्टेशन मास्टर, हैड क्वार्टर (आर्मी) जैसलमेर द्वारा प्रार्थी श्री राकेश कुमार पुत्र चनणाराम को दिनांक 9-2-2005 से सेवापृथक करना अनुचित तथा अवैध है।

(2) अप्रार्थी नियोजक प्रार्थी श्री राकेश कुमार पुत्र चनणाराम को तुरन्त सेवा में पुर्नस्थापित करे। प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक निरन्तर मानी जायेगी।

(3) प्रार्थी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक की अवधि के वेतन की 30 प्रतिशत राशि पूर्वभूति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 28 अगस्त, 2012

का.आ. 2998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14)की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेडेन्ट आफ पोस्ट आफिस, सिरोही के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय जोधपुर के पंचाट (संदर्भ संख्या 04/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2012 को प्राप्त हुआ था।

[सं. एल-40012/227/2003-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 2998.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Case No. 04/2009) of the Industrial Tribunal-cum-Labour Court Jodhpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Superintendent of Post Office, Sirohi and their workman, which was received by the Central Government on 28-8-2012.

[No. L-40012/227/2003-IR(DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद् अधिकरण एवं श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी:- श्री एच॰आर॰ नागौरी, आर॰एच॰जे॰एस॰ औद्योगिक विवाद् (केन्द्रीय) संख्या:- 04 सन् 2009 श्री दिनेश सिंह पुत्र श्री नाथुलाल राव, निवासी जैन पार्श्वनाथ मन्दिर गोडीजी, जालोर।

.....प्रार्थी

बनाम

दी सुपरिन्टेन्डेन्ट, पोस्ट, ऑफिस, भारतीय डाक विभाग, सिरोही मण्डल सिरोही।

.....अप्रार्थी

उपस्थिति:

(1) प्रार्थी के प्रतिनिधि-श्री गिरीश सांखला उपस्थित।

(2) अप्रार्थी के विरुद्ध कार्यवाही इकतरफा।

अधिनिर्णय

दिनांक: 21-12-2011

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल.-40012/227/2003-आईआर(डीयू,) नई दिल्ली दिनांक 29-1-2009 के द्वारा निम्न विवाद् अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:-

> "Whether the action of the management of Superintendent of Post Office, Sirohi Mandal, Sirohi (Rajasthan) in terminating the services of Shri Dinesh Singh Rao *w.e.f.* 26-3-2000 is legal and justified? If not, what relief the workman is entitled to?"

2. प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि उसकी नियुक्ति अप्रार्थी शाखा डाक पाल के पद पर अप्रार्थी नियोजक के अधीन ब्रांच पोस्ट मास्टर पांथेरी (धानासा) जिला जालोर के अधीन दिनांक 5-7-1999 को ज्ञापन संख्या एच/पी एफ 310/II सिरोही दिनांक 8-6-1999 के अन्तर्गत प्रदान की गई। प्रार्थी ने उल्लेख किया है कि उसकी नियुक्ति रिक्त पद के विरुद्ध मासिक वेतन 1280 रुपये तथा मंहगाई भत्ता प्रतिमाह के आधार पर कुल 1857 रुपये प्रतिमाह पर की गई थी। प्रार्थी ने उल्लेख किया है कि वह उक्त पद के लिए सक्षम तथा योग्यताधारी होने के कारण उसने अप्रार्थी के समक्ष दिनांक 25-6-1999 को प्रार्थना-पत्र प्रस्तुत किया जिसे अप्रार्थी द्वारा समुचित पाये जाने पर प्रार्थी को उक्त नियुक्ति प्रदान की गई।

3. प्रार्थी ने उल्लेख किया है कि उसने अप्रार्थी के अधीन दिनांक 5-7-1999 से दिनांक 26-3-2000 तक सेवाएं प्रदान की। प्रार्थी ने उल्लेख किया है कि उसे अ.वि.शाखा डाक पाल के पद पर नियुक्ति दी गई थी, लेकिन अप्रार्थी द्वारा उससे लिपिकीय कार्य के साथ चतुर्थ श्रेणी कर्मचारी का कार्य भी करवाया गया। प्रार्थी ने उल्लेख किया है कि उसने अप्रार्थी कार्यालय में बचत खाते व आवर्ति जमा खाते में रुपये जमा करने एवं निष्कासन की प्रविष्टियां करने, मनीओर्डर प्राप्त करने, उन्हें बनाने तथा भेजने, पंजीकृत डाक की रसीद काटने, शाखा कार्यालय में रजिस्टर में प्रविष्टियां करने, पोस्ट कार्ड अंतरदेशीय पत्र, लिफाफे तथा अन्य डाक सामग्री इत्यादी बेचने, डाक आगमन तथा निगमन दोनों की छंटनी करने, नये खाते खोलने, किसान विकास-पत्र, इन्द्रा विकास-पत्र तथा राष्ट्रीय बचत-पत्र बेचने व पुर्नभुगतान करने, शाखा कार्यालय की देख-रेख सफाई तथा पानी भरने इत्यादि समस्त कार्य किये।

4. प्रार्थी ने उल्लेख किया है कि उसका कार्य सन्तोषपूर्ण होने के बावजूद भी अप्रार्थी नियोजक द्वारा प्रार्थी की मौखिक आदेश से दिनांक

26-3-2000 को सेवाएं समाप्त कर दी। प्रार्थी ने उल्लेख किया है कि उसने अपने कार्य वर्ष में 240 दिवस से अधिक दिवस तक अप्रार्थी नियोजक के अधीन कार्य किया है, लेकिन उसकी सेवापृथकता से पूर्व उसे किसी प्रकार का कोई लिखित नोटिस, आरोप-पत्र नहीं दिया गया न ही कोई जांच की गई न ही कोई नोटिस अथवा चेतावनी-पत्र दिया गया। सेवा समाप्ति से पूर्व औद्योगिक विवाद् अधिनियम, 1947 के प्रावधानों के अन्तर्गत एक माह का नोटिस, नोटिस के बदले वेतन अथवा कोई मुआवजा राशि का भी भुगतान नहीं किया गया। प्रार्थी ने उल्लेख किया है कि उसकी सेवा समाप्ति के पश्चात् अप्रार्थी नियोजक द्वारा कई नये श्रमिकों की भर्तियां की गईं। प्राथी ने उल्लेख किया है कि इसका रिकार्ड अप्रार्थी के कब्जे में है। प्राथी ने उल्लेख किया है कि अप्रार्थी नियोजक के अधीन प्रार्थी द्वारा किये जा रहे कार्य की उपलब्धता आज भी विद्यमान है, परन्तु अप्रार्थी नियोजक द्वारा पुराने कार्मिक को हटाकर नई भर्ती की है तो अनफेयर लेबर प्रेक्टिस की तारीफ में आता है। प्रार्थी ने उल्लेख किया है कि अप्रार्थी द्वारा उक्त कृत्य औद्योगिक विवाद् अधिनियम, 1947 के प्रावधानों से बचने के उद्देश्य से किया है। इस प्रकार अप्रार्थी नियोजक द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ, 25-जी, तथा 25-एच के प्रावधानों का उल्लंघन किया गया है।

5. प्रार्थी ने आगे उल्लेख किया है कि अप्रार्थी नियोजक द्वारा उसे पुनः सेवा में लेने का आश्वासन लगातार दिया जाता रहा। प्रार्थी द्वारा प्रस्तुत मौखिक तथा लिखित प्रतिवेदन प्रस्तुत करने पर उसे यह कहा जाता रहा कि उसकी पत्रावली भारत सरकार न्यू देहली को प्रेषित की गई है तथा उच्च अधिकारियों का आदेश आते ही उसे पुनः सेवा में रख लिया जायेगा। प्राथी ने उल्लेख किया है कि आखिरतः प्रार्थी को अप्रार्थी नियोजक द्वारा पुनः सेवा में नहीं लेने पर प्रार्थी द्वारा अपना श्रम विवाद केन्द्रीय श्रम आयुक्त, अजमेर के समक्ष दिनांक 22-5-03 को प्रेषित किया गया। प्रार्थी ने उल्लेख किया है कि अप्रार्थी नियोजक ने विवाद का गलत उत्तर प्रस्तुत किया तथा दोनों पक्षों के मध्य समझौता नहीं होने पर प्राधिकारी द्वारा असफल वार्ता प्रतिवेदन दिनांक 24-10-2003 को सक्षम सरकार को प्रेषित किया गया।

6. प्रार्थी ने उल्लेख किया है सक्षम सरकार ने प्रार्थी के प्रकरण में रेफरेन्स करने से इंकार कर दिया जिस पर प्रार्थी द्वारा एक रिट याचिका संख्या 3580 सन् 2004 दिनेशसिंह राव बनाम भारत सरकार तथा अन्य माननीय राजस्थान उच्च न्यायालय, जोधपुर के समक्ष प्रस्तुत की गई। प्रार्थी ने उल्लेख किया है कि माननीय उच्च न्यायालय ने अपने आदेश दिनांक 7-1-2009 के द्वारा उक्त रिट याचिका को स्वीकार करते हुए सक्षम सरकार को प्रार्थी के प्रकरण का पुनः अवलोकन कर तीन माह के भीतर-भीतर रेफरेन्स श्रम न्यायालय को प्रेषित करने का आदेश पारित किया जिसपर सक्षम सरकार द्वारा उक्त रेफरेन्स अजमेर श्रम न्यायालय को प्रेषित कर दिया गया। प्रार्थी ने उल्लेख किया है कि प्रार्थी का प्रकरण श्रम न्यायालय जोधपुर के क्षेत्राधिकार में आता है। प्रार्थी ने उल्लेख किया है कि उसने पुनः सक्षम सरकार के समक्ष उक्त प्रकरण को श्रम न्यायालय, जोधपुर स्थानान्तरण करने बाबत आवेदन प्रस्तुत किया जिसपर सक्षम सरकार ने दिनांक 6-5-2009 के द्वारा उक्त श्रम विवाद् श्रम न्यायालय, अजमेर से श्रम न्यायालय, जोधपुर को स्थानान्तरित करने का आदेश पारित किया तथा श्रम न्यायालय, अजमेर द्वारा आदेश दिनांक 21-7-2009 के द्वारा उक्त विवाद् इस न्यायालय के समक्ष स्थानान्तरित करने का पत्र जारी किया गया। अतः यह रेफरेन्स इस न्यायालय के समक्ष प्रेषित है।

7. प्रार्थी ने उल्लेख किया है कि वह सेवा समाप्ति से आज तक बेरोजगार है, उसके जीविकोपार्जन का कोई साधन नहीं है। प्रार्थी के साथ अप्रार्थी नियोजक द्वारा श्रम शोषण किया गया है। उक्त आधारों पर प्रार्थी ने यह प्रार्थना की है कि उसे सेवा में पुर्नस्थापित किया जावे, उसकी सेवाएं लगातार मानी जावे तथा पिछला समस्त बकाया वेतन सेवा समाप्ति तिथि से दिलाया जावे।

8. उक्त पत्रावली श्रम न्यायालय, अजमेर से प्राप्त होने पर दोनों पक्षों को नोटिस जारी किये गये। अप्रार्थी की ओर से दिनांक 13-10-2009 की पेशी पर सहायक अधीक्षक डाकघर, जालोर श्री आर०के० सुथार उपस्थित हुए तथा प्रार्थी की ओर से दिनांक 24-11-2009 की पेशी पर मांग-पत्र तथा दस्तावेजात प्रस्तुत किये गये। दिनांक 24-11-2009 को अप्रार्थी की ओर से अभिभाषक श्री विनय जैन ने वकालतनामा प्रस्तुत किया। दिनांक 7-1-2010, 3-3-2010 तथा 26-4-2010 को अप्रार्थी की ओर से जवाब प्रस्तुत करने का अवसर चाहा। दिनांक 7-7-2010 को जवाब के लिए 150 रुपये के खर्च पर अवसर दिया गया। दिनांक 13-9-2010 तथा 2-11-2010 को भी जवाब प्रस्तुत नहीं होने पर अप्रार्थी का जवाब प्रस्तुत करने का अधिकार समाप्त किया गया। दिनांक 1-3-2011 को प्रार्थी की ओर से साक्ष्य में शपथ-पत्र प्रस्तुत किया गया। अपार्थी ने दिनांक 21-4-2011, 30-5-2011 तथा 21-7-2011 को शपथ-पत्र प्रस्तुत करने का अवसर चाहा। दिनांक 25-8-2011 को 200 रुपये के खर्च पर अप्रार्थी को शपथ-पत्र प्रस्तुत करने का अवसर दिया गया। पर्याप्त अवसर दिये जाने के बावजूद शपथ-पत्र प्रस्तुत नहीं होने पर अप्रार्थी का शपथ-पत्र प्रस्तुत करने का अधिकार दिनांक 10-10-2011 को खत्म किया गया। दिनांक 24-11-2011 को अप्रार्थी की ओर से किसी के उपस्थित नहीं होने से अप्रार्थी नियोजक के विरुद्ध कार्यवाही इकतरफा का आदेश पारित किया गया।

10. बहस सुनी गई। पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है।

11. प्रार्थी ने अपने शपथ-पत्र में मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि की है। अप्रार्थी को कई बार अवसर देने के उपरान्त भी अप्राथी द्वारा न तो जवाब प्रस्तुत किया गया और न ही साक्ष्य में कोई शपथ-पत्र प्रस्तुत किया गया। अप्रार्थी की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई। अप्रार्थी की ओर से प्रार्थी से उसके शपथ-पत्र पर कोई प्रतिपरीक्षा भी नहीं की गई। अन्ततः अप्रार्थी के विरुद्ध एकपक्षीय कार्यवाही किये जाने के आदेश दिये गये। इन परिस्थितियों में हमारी यह राय है कि प्रार्थी के शपथ-पत्र में उल्लेख किये गये तथ्यों पर अविश्वास करने का कोई कारण नहीं है।

12. प्रार्थी की अखण्डित साक्ष्य के आधार पर यह तथ्य प्रमाणित होता है कि प्रार्थी को अप्रार्थी विभाग ने दिनांक 5-7-1999 को अन्कि शाखा में डाकपाल के पद पर नियुक्ति दी तथा प्रार्थी ने वहां निरन्तर दिनांक 26-3-2000 तक कार्य किया। पत्रावली पर उपलब्ध साक्ष्य से

यह तथ्य प्रमाणित है कि अप्रार्थी ने प्रार्थी की सेवाएं दिनांक 26-3-2000 से समाप्त की। इस प्रकार प्रार्थी ने उसकी सेवा समाप्ति के पूर्व के 12 केलेण्डर माहों में कुल 240 दिन से अधिक दिन तक कार्य किया। पत्रावली पर ऐसी कोई साक्ष्य नहीं है जिसके आधार पर यह माना जा सके कि अप्रार्थी ने प्रार्थी की सेवा समाप्ति औद्योगिक विवाद् अधिनियम, 1947 की धारा 25-एफ के प्रावधानों की पालना में एक माह का नोटिस अथवा नोटिस वेतन तथा छंटनी मुआवजा अदा कर की। अत: पत्रावली पर उपलब्ध अखण्डित साक्ष्य के आधार पर हमारी राय में प्रार्थी की सेवा समाप्ति अनुचित तथा अवैध प्रमाणित होती है।

13. अप्रार्थी के विरुद्व एकपक्षीय कार्यवाही चली है। अप्रार्थी की ओर से न तो मांग-पत्र का प्रत्युत्तर प्रस्तुत किया गया है और न ही साक्ष्य में कोई शपथ-पत्र प्रस्तुत किया गया है। प्रार्थी के शपथ-पत्र पर प्रतिपरीक्षा भी नहीं की गई है। ऐसी स्थिति में हमारी यह राय है कि प्रार्थी उसकी सेवा की निरन्तरता में सेवा में पुर्नस्थापित किये जाने योग्य है। प्रार्थी की सेवा समाप्ति दिनांक 26-3-2000 की बताई गई है। इस प्रकार प्रार्थी की सेवा समाप्त हुए करीब 10 वर्ष से भी ज्यादा समय हो गया है। इस अवधि में प्रार्थी ने अपना अपने परिवार का भरण पोषण किया होगा। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी उसकी सेवा समाप्ति से सेवा में पुर्नस्थापित किये जाने तक की अवधि के वेतन की 25 प्रतिशत राशि पूर्वभृति के रूप में प्राप्त करने का अधिकारी है।

आदेश

अत: यह अधिनिर्णित किया जाता है कि:-

(1) अप्रार्थी नियोजक अधीक्षक, डाकघर, भारतीय डाक विभाग, सिरोही मण्डल, सिरोही द्वारा प्राथी श्री दिनेशसिंह पुत्र श्री नाथुलाल को दिनांक 26-3-2000 से सेवापृथक करना उचित तथा वैध नहीं है।

(2) अप्रार्थी नियोजक प्रार्थी श्री दिनेशसिंह पुत्र श्री नाथुलाल को तुरन्त सेवा में पुर्नस्थापित करे। प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक निरन्तर मानी जायेगी।

(3) प्रार्थी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक की अवधि के वेतन की 25 प्रतिशत राशि पूर्वभृति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 28 अगस्त, 2012

का.आ. 2999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आफीसर इन्चार्ज, जोलोजिकल सर्वे आफ इन्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, जोधपुर के पंचाट (संदर्भ संख्या 03/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2012 को प्राप्त हुआ था।

[सं. एल-42012/56/2008-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 2999.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Case No. 03/2009) of the Industrial Tribunal-cum-Labour Court Jodhpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Officer-in-charge, Zoological Survey of India their workman, which was received by the Central Government on 28-08-2012.

[No. L-42012/56/2008-IR(DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद् अधिकरण एवं श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी:- श्री एच.आर. नागौरी, आर.एच.जे.एस. औद्योगिक विवाद् (केन्द्रीय) संख्या:- 03 सन् 2009 श्री दीपक कुमार पुत्र श्री बिरदीचन्द जाति हरिजन, निवासी मकान नं5/बी/151, कुड़ी भगतासनी हाउसिंग बोर्ड, जोधपुर।

....प्रार्थी

बनाम

प्रभारी अधिकारी, भारतीय प्राणी सर्वेक्षण, मरू प्रादेशिक शाखा, झालामण्ड, पाली रोड़, जोधपुर।

...अप्रार्थी

उपस्थिति:

(1) प्रार्थी के प्रतिनिधि-श्री के०के०व्यास उपस्थित।

(2) अप्रार्थीगण के प्रतिनिधि श्री हरीश माथुर उपस्थित।

अधिनिर्णय

दिनांक: 04-05-2012

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूना क्रमांक एल.-42012/56/2008-आईआर (डीयू) नई दिल्ली दिनांक 10-2-2009 के द्वारा निम्न विवाद् अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:—

"Whether the action of the management of Zoological Survey of India in terminating the services of their workman Shri Deepak Kumar w.e.f. 1-12-2004 is legal and justified? If not, to what relief the workman is entitled to?

2. प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि उसकी अप्रार्थी विभाग में सर्वप्रथम नियुक्ति दिनांक 16-10-2000 को सफाई कर्मचारी के पद पर मौखिक आदेश के द्वारा हुई थी। प्रार्थी अप्रार्थी विभाग के दो-तीन बीघा में फैले परिसर तथा कार्यालय की पूरी सफाई करता था तथा अप्रार्थी विभाग के सभी अधिकारीगण प्रार्थी के कार्य से सन्तुष्ट थे। प्रार्थी अप्रार्थी विभाग में सप्ताह के सातों दिन कार्य करता था। कार्यालय अवकाश होने के बावजूद प्रार्थी अवकाश के दिन भी अप्रार्थी विभाग के निर्देशानुसार अप्रार्थी विभाग के खाली पड़े परिसर में सफाई करता था। प्रार्थी की उपस्थिति रजिस्टर में होती थी तथा प्रार्थी को प्रत्येक माह बिल के आधार पर अप्रार्थी विभाग वेतन का भुगतान करता था। प्रार्थी समय-समय पर अपना वेतन बढ़ाने की मांग भी करता था तथा अप्रार्थी विभाग के अधिकारी उसके वेतन में बढ़ोतरी भी करते रहते थे। प्रार्थी के समय-समय पर वेतन बढ़ाने की मांग से त्रस्त होकर अप्रार्थी विभाग ने प्रार्थी को अचानक बिना किसी कारण के दिनांक 1-12-2004 को सेवा से मुक्त कर दिया। प्रार्थी ने यह उल्लेख किया है कि उसने प्रत्येक वर्ष की अवधि में 240 दिनों से अधिक निरन्तर कार्य किया है। प्रार्थी ने यह उल्लेख किया है कि उसके साथ कार्यरत कर्मचारियों को अप्रार्थी विभाग ने नहीं हटाया और उन्हें स्थाई कर दिया गया। प्रार्थी के साथ सौतेला व्यवहार किया गया तथा उसे अवैध रूप से सेवा से पृथक किया गया।

3. प्रार्थी ने यह उल्लेख किया है कि उसे सेवामुक्त करने के पश्चात अप्रार्थी विभाग द्वारा मंगल पुत्र श्री कालूराम को सेवा में नियुक्त किया गया, लेकिन प्रार्थी को सेवा में नहीं लिया गया और न ही उसे पुन: सेवा में स्थापित करने का कोई अवसर प्रदान किया गया। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी विभाग ने औद्योगिक विवाद् अधिनियम, 1947 की धारा 25-जी तथा 25-एच के प्रावधानों का उल्लंघन किया है। प्रार्थी को सेवामुक्त करने के पूर्व विधिमान्य नोटिस नहीं दिया गया, नोटिस वेतन तथा छंटनी मुआवजा भी अदा नहीं किया गया। प्रार्थी ने उल्लेख किया है कि अप्रार्थी विभाग ने औद्योगिक विवाद् अधिनियम, 1947 की धारा 25-एफ के प्रावधानों का भी उल्लंघन किया है। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी विभाग में स्थाई नेचर का कार्य है और समय-समय पर नये श्रमिकों को नियुक्तियाँ दी जाती रही। अप्रार्थी विभाग ने सफाई कर्मचारी का पद रिक्त है। अप्रार्थी विभाग ने प्रार्थी को सेवामुक्त करने में औद्योगिक विवाद् नियम के नियम-77 का भी उल्लंघन किया है। उक्त आधारों पर प्रार्थी ने प्रार्थना की है कि उसके सेवामुक्ति आदेश दिनांक 1-12-2004 को अवैध तथा शून्य घोषित किया जावे तथा प्रार्थी को पुन: सेवा में स्थापित किया जावे। प्रार्थी ने यह उल्लेख किया है कि उसकी प्रथम नियुक्ति दिनांक 16-10-2000 से निरन्तर मानी जावे तथा प्रार्थी को सेवामुक्ति दिनांक से पुन: सेवा में स्थापित करने की अवधि का पूरा वेतन दिलाया जावे।

4. अप्रार्थी विभाग ने अपने प्रत्युत्तर में यह उल्लेख किया है कि अप्रार्थी विभाग ने प्रार्थी को अपने विभाग में कोई नियुक्ति नहीं दी बल्कि प्रार्थी को अप्रार्थी विभाग में सफाई कार्य करने हेतु किसी ठेकेदार के मार्फत दैनिक वेतन भोगी के रूप में रखा था। प्रार्थी को सफाई करने पर भुगतान कर दिया जाता था तथा भुगतान की रसीद ले ली जाती थी। अप्रार्थी विभाग ने यह उल्लेख किया है कि प्रार्थी अन्य किसी स्थान पर नौकरी करने का आवेदन करना चाहता था तथा इसके लिये प्रार्थी ने अप्रार्थी विभाग के प्रभारी अधिकारी को अपने कार्य के सम्बन्ध में तथा चरित्र प्रमाण-पत्र देने के लिए कहा तो उस अधिकारी ने प्रार्थी को यह प्रमाण-पत्र दिया था। इसके पीछे कारण यह बताया गया कि प्रार्थी करीब तीन वर्ष से अप्रार्थी विभाग में कार्य कर रहा था। अप्रार्थी विभाग ने यह उल्लेख किया है कि ऐसा प्रमाण-पत्र देने का यह मतलब नहीं था कि प्रार्थी अप्रार्थी विभाग में नियुक्त था तथा प्रार्थी अप्रार्थी विभाग का कर्मचारी था। प्रार्थी अप्रार्थी विभाग में सिर्फ दैनिक वेतन भोगी के रूप में ही रखा गया था।

5. अप्रार्थी विभाग ने उल्लेख किया है कि अप्रार्थी विभाग में पांच दिन ही कार्य होता है तथा अवकाश के दिन कार्यालय बंद रहता है अर्थात उन दिनों में प्रार्थी द्वारा सफाई कार्य का प्रश्न ही नहीं रहता। अप्रार्थी विभाग ने यह उल्लेख किया है कि अप्रार्थी विभाग के कर्मचारियों के आवासीय परिसर अप्रार्थी विभाग के इसी कार्यालय में हैं तथा प्रार्थी एक प्राईवेट व्यक्ति तथा मजदूर था और वह उन कर्मचारियों के आवासीय परिसर में अवकाश के दिन कार्य करता था और प्राथी उन्हीं कर्मचारियों से उन दिनों का भुगतान प्राप्त करता था। अवकाश के दिन अप्रार्थी विभाग का कार्यालय सम्पूर्ण रूप से बन्द रहता था। अप्रार्थी विभाग ने उल्लेख किया है कि प्रार्थी ने अपने पैसे बढ़ाने के लिए तथा मजदूरी बढ़ाने के लिए प्रार्थना-पत्र दिये थे न कि वेतन बढ़ाने के लिए प्रार्थना-पत्र दिये थे। अप्रार्थी ने उल्लेख किया है कि वेतन केवल कर्मचारियों को ही मिलता है। प्रार्थी को अप्रार्थी विभाग ने नौकरी पर नहीं रखा था तथा उसे कोई नियुक्ति नहीं दी थी और इस कारण औद्योगिक विवाद् अधिनियम की धारा 25-एफ, 25-जी तथा 25-एच के प्रावधान इस प्रकरण पर लागू नहीं होते हैं।

6. अप्रार्थी विभाग ने यह उल्लेख किया है कि प्रार्थी अपनी मर्जी से दिसम्बर 2004 से सफाई कार्य करने के लिए अप्रार्थी के कार्यालय में उपस्थित नहीं हुआ और प्रार्थी ने इसके सम्बन्ध में कोई सूचना भी नहीं दी थी। प्रार्थी के उपस्थित नहीं होने पर अप्रार्थी के कार्यालय में निजी संस्था के मार्फत एक अन्य व्यक्ति को कार्यालय में सफाई हेतु रख लिया। प्रार्थी सफाई करने नहीं आया तब दूसरे व्यक्ति से सफाई करवाना शुरू कर दिया। उक्त आधारों पर अप्रार्थी ने प्रार्थी के मांग-पत्र को निरस्त करने की प्रार्थना की।

7. प्रार्थी ने अपने मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया गया। प्रार्थी पी०डब्ल्यू-1 श्री दीपक कुमार से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में वेतन बढ़ाने के लिए प्रार्थना-पत्र प्रदर्श-1 वेतन हेतु प्रार्थना-पत्र प्रदर्श-2, सफाई कर्मचारी के रिक्त पद पर नियुक्ति हेतु प्रार्थना-पत्र प्रदर्श-3, वेतन बढ़ाने हेतु प्रार्थना-पत्र प्रदर्श-4, सूचना प्रदर्श-5, रसीद प्रदर्श-6, तथा बिल प्रदर्श-7, लगायत प्रदर्श-51, तथा रसीद प्रदर्श-52, लगायत प्रदर्श-55, को पेश कर प्रदर्श करवाये गये। अप्रार्थी की ओर से श्रीमती पदमा बोहरा का शपथ-पत्र प्रस्तुत किया गया। डी. डब्ल्यू-1 श्रीमती पदमा बोहरा से प्रतिपरीक्षा की गई।

8. बहस उभय-पक्ष सुनी गई। पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है।

9. अप्रार्थी ने मांग-पत्र के प्रत्युत्तर में यह तथ्य स्वीकार किया है कि प्रार्थी को दिनांक 16-10-2000 को सफाई कर्मचारी के पद पर नियुक्ति दी थी तथा प्रार्थी ने दिसम्बर, 2004 तक अप्रार्थी विभाग में निरन्तर कार्य किया था। अप्रार्थी विभाग के साक्षी श्रीमती पदमा बोहरा ने प्रतिपरीक्षा में इस तथ्य को स्वीकार है कि प्रार्थी को अप्रार्थी विभाग ने वर्ष 2000 में लगाया था तथा प्रार्थी ने अप्रार्थी विभाग में 1 दिसम्बर, 2004 तक कार्य किया। अप्रार्थी विभाग ने मांग-पत्र के प्रत्युत्तर में यह तथ्य उल्लेख किया है कि प्रार्थी ने निरन्तर तीन वर्ष तक कार्य किया था। प्रार्थी ने अप्रार्थी विभाग के अधिकारी के समक्ष अपना वेतन बढ़ाने हेतु प्रार्थना-पत्र प्रदर्श-1 तथा प्रार्थना-पत्र प्रदर्श-4, प्रस्तुत किये थे। इन प्रार्थना-पत्रों पर कार्यालय के कर्मचारी ने रिपोर्ट की थी कि प्रार्थी शनिवार तथा रविवार के दिन भी अप्रार्थी विभाग में सफाई कार्य करता है। अत: उपलब्ध साक्ष्य के आधार पर यह तथ्य प्रमाणित है कि प्रार्थी ने उसकी प्रथम नियुक्ति तिथि दिनांक 16-10-2000 से उसकी सेवा समाप्ति की दिनांक 1-12-2004 तक अप्रार्थी विभाग में निरन्तर सेवा कार्य किया है। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में औद्योगिक विवाद् अधिनियम की धारा 25-बी के प्रावधानों के अनुसार प्रार्थी की अप्रार्थी विभाग में निरन्तर सेवा प्रमाणित होती है।

10. विद्वान प्रतिनिधि अप्रार्थी का यह तर्क रहा है कि स्वयं प्रार्थी ने वेतन बढ़ाने के प्रार्थना-पत्र प्रदर्श-1 तथा प्रार्थना-पत्र प्रदर्श-4 में स्पष्ट रूप से यह उल्लेख किया है कि उसने अप्रार्थी विभाग में ठेके पर तथा अनुबंध पर कार्य किया था। प्रार्थी ने अपने वेतन के लिए प्रस्तुत प्रार्थना-पत्र प्रदर्श-2 में भी यह उल्लेख किया है कि उसने अनुबन्ध के तहत अप्रार्थी विभाग में कार्य किया था। विद्वान प्रतिनिधि अप्रार्थी का इन आधारों पर यह मानना है कि प्रार्थी अप्रार्थी विभाग का कर्मचारी नहीं था तथा प्रार्थी और अप्रार्थी के मध्य कर्मकार तथा नियोजक का संबंध नहीं था। इन तर्कों के विपरित विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि प्रार्थी एक अल्प शिक्षित तथा गरीब व्यक्ति है तथा उसने अप्रार्थी विभाग के अधिकारियों के कहने पर दबाव में आकर तथा अपने रोजगार के लिए इन प्रार्थना-पत्रों में ठेका तथा अनुबंध शब्द का प्रयोग कर लिया। विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि स्वयं अप्रार्थी ने मांग-पत्र के प्रत्युत्तर में यह तथ्य उल्लेख किया है कि प्रार्थी अप्रार्थी विभाग में दैनिक वेतन भोगी कर्मचारी था। इस आधार पर विद्वान प्रतिनिधि प्रार्थी का यह मानना है कि प्रार्थी तथा अप्रार्थी के मध्य कर्मकार तथा नियोक्ता का संबंध प्रमाणित होता है।

11. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया। यह एक तथ्य है कि प्रार्थी ने वेतन बढ़ाने के प्रार्थना-पत्र-प्रदर्श-1 तथा प्रदर्श-4 में ठेके पर कार्य करने का तथ्य उल्लेख किया है तथा वेतन हेतु प्रस्तुत प्रार्थना-पत्र प्रदर्श-2 में अनुबंध पर कार्य करने के तथ्य का उल्लेख किया है, लेकिन स्वयं अप्रार्थी ने मांग-पत्र के प्रत्युत्तर में यह उल्लेख किया है कि प्रार्थी को दैनिक वेतन पर रखा गया था। अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी को किसी ठेकेदार के मार्फत दैनिक वेतन भोगी के रूप में रखा गया था, लेकिन अप्रार्थी विभाग ने यह स्पष्ट नहीं किया है कि वह ठेकेदार कौन था। प्रार्थी ने वेतन की रसीद प्रदर्श-6 तथा प्रदर्श-52 लगायत प्रदर्श-55 प्रस्तुत की है। प्रार्थी ने वेतन बिल प्रदर्श-7 लगायत प्रदर्श-51 भी प्रस्तुत किये हैं। इन दस्तावेजों से यह स्पष्ट है कि प्रार्थी को अप्रार्थी विभाग के द्वारा ही वेतन दिया जाता था। इसके अलावा यहां यह उल्लेख करना समीचीन है कि राजस्थान राज्य के संदर्भ में सन् 1958 के राजस्थान अधिनियम-34 के द्वारा धारा 2 (5) I.D. Act में संशोधन कर किसी ठेकेदार द्वारा किसी अनुबंध के तहत नियुक्त श्रमिक को भी कर्मकार की परिभाषा में सम्मिलित कर लिया गया है। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी तथा अप्रार्थी के मध्य कर्मकार तथा नियोक्ता के संबंध प्रमाणित होते हैं। विद्वान प्रतिनिधि अप्रार्थी का यह तर्क रहा है कि प्रार्थी माह दिसम्बर 2004 से स्वयं कार्य छोड़कर चला गया और ऐसी स्थिति में प्रार्थी कोई लाभ प्राप्त करने का अधिकारी नहीं है। हमने इस तथ्य के संबंध में पत्रावली पर उपलब्ध साक्ष्य पर विचार किया। प्रार्थी से इस तथ्य के संबंध में अप्रार्थी विभाग द्वारा कोई सारभूत प्रतिपरीक्षा नहीं की गई है। हमारी यह राय है कि प्रार्थी ने अप्रार्थी विभाग में लम्बे समय तक कार्य किया है और यदि ऐसी स्थिति में प्रार्थी स्वयं अपनी इच्छा से कार्य छोड़कर जाता तो निश्चित रूप से अप्रार्थी विभाग प्रार्थी को इसके लिए कारण बताओ सूचना-पत्र देता और अग्रिम कार्यवाही करता, लेकिन अप्रार्थी विभाग ने ऐसा कुछ नहीं किया है। हमारी राय में यह तथ्य प्रमाणित नहीं होता है कि प्रार्थी स्वेच्छा से अपने कार्य से अनुपस्थित हुआ।

12. हमने ऊपर उल्लेख किया है कि प्रार्थी की औद्योगिक विवाद अधिनियम की धारा 25-बी के प्रावधानों के अनुसार निरन्तर सेवा प्रमाणित हुई है। पत्रावली पर ऐसी कोई साक्ष्य नही है कि अप्रार्थी विभाग ने प्रार्थी को सेवा से पृथक करने के पूर्व औद्योगिक विवाद् अधिनियम की धारा 25-एफ के प्रावधानों के अनुसार एक माह का नोटिस अथवा नोटिस वेतन तथा छंटनी मुआवजा अदा किया हो। हमारी राय में अप्रार्थी विभाग द्वारा प्रार्थी की सेवा समाप्ति अवैध तथा अनुचित प्रमाणित होती है।

13. उक्त विवेचन के अलावा यहाँ यह उल्लेख करना समीचीन है कि अप्रार्थी विभाग ने यह तथ्य स्वीकार किया है कि प्रार्थी को सेवा से पृथक करने के बाद अप्रार्थी विभाग ने एक अन्य श्रमिक श्री मंगल को सफाई कर्मचारी के पद पर रखा। पत्रावली पर ऐसी साक्ष्य नहीं है कि श्री मंगल को सफाई कर्मचारी के पद पर रखने के पूर्व प्रार्थी को पुन: सेवा में स्थापित करने हेतु कोई अवसर दिया गया। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में औद्योगिक विवाद् अधिनियम की धारा 25-एच के प्रावधान का भी उल्लंघन प्रमाणित होता है।

14. अब हमें यह देखना है कि प्राथी क्या अनुतोष प्राप्त करने का अधिकारी है? प्राथी ने अप्रार्थी विभाग में दिनांक 16-10-2000 से 1-12-2004 तक निरन्तर कार्य किया है। प्राथी ने राजकीय अवकाश रविवार के दिन भी अप्रार्थी विभाग में कार्य किया है। इस प्रकार प्रार्थी ने अप्रार्थी विभाग में करीब चार वर्ष से भी ज्यादा अवधि तक निरन्तर कार्य किया है। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात्

हमारी राय में प्रार्थी को उसकी सेवा की निरन्तरता में अप्रार्थी विभाग में सेवा में पुर्नस्थापित किया जाना समीचीन है। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने की पश्चात् हमारी राय में प्रार्थी अप्रार्थी विभाग से सेवा में पृथक करने के तिथि से सेवा में पुर्नस्थापित करने की तिथि तक की अवधि के वेतन की 50 प्रतिशत राशि पूर्वभृति के रूप में प्राप्त करने का अधिकारी है।

आदेश

15. अत: यह अधिनिर्णित किया जाता है कि:-

(1) अप्रार्थी नियोजक प्रभारी अधिकारी, भारतीय प्राणी सर्वेक्षण, मरू प्रादेशिक शाखा, झालामण्ड, पाली रोड, जोधपुर द्वारा प्रार्थी श्री दीपक कुमार पुत्र श्री बिरदीचन्द की सेवा दिनांक 1-12-2004 से समाप्त किये जाने की कार्यवाही अवैध तथा अनुचित है।

(2) अप्रार्थी नियोजक प्रार्थी श्री दीपक कुमार पुत्र श्री बिरदीचन्द को तुरन्त सेवा में पुर्नस्थापित करे। प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक निरन्तर मानी जायेगी।

(3) प्रार्थी उसकी सेवा समाप्ति की तिथि से सेवा में पुर्नस्थापित होने तक की अवधि के वेतन की 50 प्रतिशत राशि पूर्वभृति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है।

एच॰आर॰ नागौरी, न्यायाधीश

नई दिल्ली, 28 अगस्त, 2012

का.आ.3000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाइरेक्टर सैन्ट्रल वूल डिर्पाटमेंट बोर्ड, रातानाडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर के पंचाट (संदर्भ संख्या 01/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2012 को प्राप्त था।

[सं.-एल.-42012/70/2008-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 3000.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. Case no. 01/2010) of the Industrial Tribunal cum Labour Court, Jodhpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of the Director, Central Wool Development Board, Ratanada their Workman, which was received by the Central Government on 28-08-2012.

[No. L-42012/70/2008-IR(DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद् अधिकरण एवं श्रम न्यायालय, जोधपुर।

पीठासीन अधिकार: श्री एच.आर. नागौरी, आर.एच.जे.एच.

औद्योगिक विवाद् (केन्द्रीय) संख्या:- 01 सन् 2010

श्री रामप्रकाश देवल पुत्र श्री अवधदान देवल निवासी कूपड़ावास तहसील बिलाड़ा।

.....प्रार्थी

बनाम

1. कार्यकारी निदेशक, केन्द्रीय ऊन विकास बोर्ड, वस्त्र मंत्रालय, भारत सरकार, मेन हाईकोर्ट कॉलोनी रोड रातानाडा, जोधपुर
2. प्रशासनिक अधिकारी, केन्द्रीय ऊन विकास बोर्ड, वस्त्र मंत्रालय, भारत सरकार मैन हाईकोर्ट कॉलोनी रोड रातानाडा, जोधपुर।

.....अप्रार्थीगण

उपस्थिति:-

(1) प्रार्थी के प्रतिनिधि–श्री विनोद पुरोहित उपस्थित।

(2) अप्रार्थी के प्रतिनिधि–श्री एन. के. चण्डक उपस्थित।

अधिनिर्णय

दिनांक:-19.04.2012

1. भारता सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल.-42012/70/2008–आईआर (डीयु) नई दिल्ली दिनांक 16-02-2009 के द्वारा निम्न विवाद् अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:-

> "Whether the action of the management of the Central Wool Development Board in terminating the services of their workman Shri Ram Prakash Deval w.e.f. 30-03-2000 is legal and justified? If not, to what relief the workman is entitled to?"

2. प्रार्थी ने अपने मांग पत्र में यह उल्लेख किया है कि अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक को दैनिक वेतन भोगी के पद पर दिनांक 15-07-1989 को नियुक्त किया गया। अप्रार्थी नियोजक के द्वारा प्रार्थी श्रमिक की सेवाओं को आदेश दिनांक 3-3-2000 के द्वारा समाप्त कर दिया गया। प्रार्थी ने यह उल्लेख किया है कि वह अस्वस्थ हो जाने के कारण मुख्यालय परित्याग की अनुमति लेकर अवकाश पर गया था। प्रार्थी श्रमिक ने समय-समय पर अवकाश बढ़ाने बाबत निवेदन किया। प्रार्थी श्रमिक ने समय-समय पर अप्रार्थी नियोजक को तार, टेलीफोन आदि से सूचना भी प्रेषित की, लेकिन इसके उपरान्त भी अप्रार्थी नियोजक द्वारा प्रार्थी श्रमिक को आदेश दिनांक 3-3-2000 के द्वारा सेवा से पृथक कर दिया गया। प्रार्थी श्रमिक ने दिनांक 3-3-2000 के पूर्व एक केलेण्डर वर्ष में 240 दिवस से अधिक सेवा समय सेवाअवधि पूरी कर ली थी। अप्रार्थी नियोजक ने प्रार्थी की सेवा समाप्त करने के पूर्व औद्योगिक

विवाद् अधिनियम की धारा 25–एफ के प्रावधानों की पालना नहीं की। अप्रार्थी विभाग ने प्रार्थी श्रमिक की सेवा समाप्त करने के पूर्व औद्योगिक विवाद् नियम के नियम-77 के अन्तर्गत अपने श्रमिकों की वरिष्ठता सूची जारी नहीं की। अप्रार्थी नियोजक ने औद्योगिक विवाद् अधिनियम की धारा 25-जी के प्रावधानों के अनुसार अंतिम आवक प्रथम जावक के सिद्धांत की भी पालना नहीं की।

3. प्रार्थी ने उल्लेख किया है कि अप्रार्थी नियोजक ने प्रार्थी श्रमिक के बाद नियुक्त कनिष्ठ कर्मचारियों को सेवा में बनाये रखा और प्रार्थी श्रमिक की सेवाओं को समाप्त कर दिया। प्रार्थी श्रमिक सेवा समाप्ति की दिनांक से ही बेरोजगार है। उसने पुनः नियुक्ति के लिए अप्रार्थी विभाग के उच्च अधिकारियों को कई बार निवेदन किया तथा प्रतिवेदन भी प्रस्तुत किये लेकिन उसे केवल जुबानी आश्वासन के अतिरिक्त उसके पुनः नियुक्ति के मामले में कोई कार्यवाही नहीं की गई। उक्त आधारों पर प्रार्थी ने यह प्रार्थना की है कि प्रार्थी श्रमिक की सेवा समाप्ति के आदेश दिनांक 3-3-2000 को अनुचित तथा गैर वाजिब घोषित किया जावे तथा प्रार्थी श्रमिक को उसकी सेवा समाप्ति दिनांक 3-3-2000 के प्रभाव से अप्रार्थी नियोजक के अधीन पुनः सेवा में नियोजित करने का आदेश प्रदान कराया जावे तथा प्रार्थी को सेवा समाप्ति की तिथि से सभी अनुगामी लाभ प्रदान कराये जावें।

4. अप्रार्थीगण ने अपने प्रत्युत्तर मे यह उल्लेख किया है कि प्रार्थी अप्रार्थीगण के यहां दैनिक वेतन भोगी कर्मचारी के रूप में किसी भी प्रकार से नियोजित कर्मचारी नहीं था। उसने अप्रार्थी के यहां कभी भी निरन्तर कार्य नहीं किया। प्रार्थी स्वयं बिना किसी कारण के लम्बे अन्तराल तक अपने काम से अनुपस्थित रहा और स्वयं ही अपनी मर्जी से काम पर नहीं आया। प्रार्थी अपने आपको जुलाई 89 में कार्यरत मानता है और उसने यह विवाद् 2011 में प्रस्तुत किया और इस प्रकार उसने अपना यह विवाद् 22वर्षों के पश्चात् प्रस्तुत किया है। इस देरी का कोई कारण नहीं बताया है। इस तथ्य को गलत बताया है कि अप्रार्थी द्वारा प्रार्थी को 11 वर्ष पूर्व सेवा से पृथक किया गया। प्रार्थी अपने आपको अस्वस्थ बताता है तो ऐसी स्थिति में प्रार्थी किसी प्रकार का अनुतोष प्राप्त करने का अधिकारी नहीं है। इस तथ्य को गलत बताया है कि प्रार्थी की सेवा दिनांक 3-3-2000 को समाप्त की गई। इस तथ्य को गलत बताया है कि उसने 240 दिन तक लगातार काम किया। अप्रार्थी ने उल्लेख किया है कि प्रार्थी केवल मात्र चन्द दिनों के लिए दैनिक वेतन भोगी के रूप में कार्यरत् रहा। इतने वर्ष बाद प्रार्थी द्वारा यह विवाद् उठाया जाना अपने आपमें सन्देहपूर्ण है। प्रार्थी लम्बे अंतराल से खुद ही अनुपस्थित रहता था। अप्रार्थीगण ने यह उल्लेख किया है कि प्रार्थी की आयु लगभग 45 वर्ष होनी चाहिये। इस लम्बी उम्र में प्रार्थी द्वारा दैनिक वेतन भोगी के रूप में कार्य किया जाना व्यवहारिक रूप से सम्भव नहीं है।

5. अप्रार्थीगण ने अपने प्रत्युत्तर में यह भी उल्लेख किया है कि प्रार्थी द्वारा इसके पूर्व एक विवाद् श्रम न्यायालय, जोधपुर में पेश किया गया था। उसका निर्णय उसके पक्ष में 14 वर्ष पूर्व दिनांक 2-5-1997 को हुआ था। उस समय प्रार्थी को श्रम न्यायालय के आदेश की पालना में नौकरी पर रख लिया गया था, लेकिन प्रार्थी अपनी मर्जी से ही नौकरी छोड़कर चला गया। श्रम न्यायालय में प्रस्तुत प्रकरण की संख्या श्रम विवाद् संख्या 5 सन् 1994 थी। उसमें पारित अधिनिर्णय दिनांक 2-5-1997 के विरुद्ध अप्रार्थी नियोजक ने माननीय राजस्थान उच्च न्यायालय में याचिका संख्या 1624 सन् 1998 प्रस्तुत की थी। उसमें पारित निर्णय दिनांक 13-3-2000 में स्पष्ट वर्णन है कि प्रार्थी अपनी मर्जी से अनुपस्थित चल रहा है और इसी परिस्थिति में अप्रार्थीगण द्वारा प्रस्तुत यह रिट याचिका निरस्त कर दी गई। प्रार्थी ने एक रिट याचिका संख्या 646 सन् 1998 भी प्रस्तुत की थी। उसमें प्रार्थी ने अपनी सेवा को नियमित किये जाने की प्रार्थना की थी। यह रिट याचिका भी माननीय राजस्थान उच्च न्यायालय ने दिनांक 13-2-2000 को निरस्त कर दी थी। प्रार्थी ने अपने पूर्व के श्रम विवाद् तथा श्रम न्यायालय के निर्णय तथा दोनों रिट याचिकाओं के निर्णयों को छुपाते हुए यह आवेदन प्रस्तुत किया है और ऐसी स्थिति में प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है। उक्त आधारों पर अप्रार्थीगण ने प्रार्थी के मांग-पत्र को निरस्त करने की प्रार्थना की।

6. प्रार्थी ने अपने मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्रार्थी पी.डब्ल्यू-1 श्री रामप्रकाश से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में श्रम न्यायालय द्वारा पारित अधिनिर्णय दिनांक 2-5-1997 प्रदर्श-1, सेवा समाप्ति आदेश प्रदर्श-2, रोग प्रमाण-पत्र प्रदर्श-3, लगायत प्रदर्श-6, प्रकाशित समाचार प्रदर्श-7, तार की प्रति प्रदर्श-8, पोस्टल रसीद प्रदर्श-9, तथा प्रदर्श-10, पुनः नियुक्ति प्रार्थना-पत्र प्रदर्श-11 लगायत प्रदर्श-15, पोस्टल रसीद प्रदर्श-16, तथा प्रदर्श-17 तथा कर्मचारी भविष्य निधि संगठन का फार्म प्रदर्श-18, को पेश कर प्रदर्श करवाये गये। अप्राथीगण की ओर से श्री कृष्णकांत गोयल का शपथ-पत्र प्रस्तुत किया गया। डी.डब्ल्यू-1 श्री कृष्णकांत गोयल से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में आदेश प्रदर्श ए-1 तथा आदेश प्रदर्श ए-2 को पेश कर प्रदर्श करवाये गये।

7. बहस उभय-पक्ष सुनी गई। पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्नप्रकार है।

8. पत्रावली पर उपलब्ध साक्ष्य से यह स्पष्ट है कि प्रार्थी को दिनांक 15-7-1989 को अप्रार्थीगण द्वारा दैनिक वेतन भोगी कर्मचारी के पद पर नियुक्त किया गया था। अप्रार्थीगण नियोजक द्वारा पूर्व में दिनांक 31-4-1992 को प्रार्थी की सेवा समाप्त कर दी थी। इस सेवा समाप्ति के सम्बन्ध में प्रार्थी ने एक औद्योगिक विवाद संख्या 5 सन् 1994 इस न्यायालय में प्रस्तुत किया था। इस विवाद् में अधिनिर्णय दिनांक 2-5-1997 प्रदर्श-1 के द्वारा प्रार्थी की सेवा समाप्ति को अवैध तथा अनुचित घोषित कर दिया तथा प्रार्थी को उसकी सेवा की निरन्तरता में

पुनर्स्थापित करने का आदेश दिया। अप्रार्थी विभाग ने इस अधिनिर्णय की पालना में प्रार्थी को दिनांक 8-5-1997 को पुन: सेवा में ले लिया और साथ ही अप्रार्थी नियोजक ने उक्त अधिनिर्णय प्रदर्श-1 के विरुद्ध माननीय राजस्थान उच्च न्यायालय में एस.बी. सिविल रिट पिटीशन संख्या 1624 सन् 1998 भी प्रस्तुत की थी। माननीय राजस्थान उच्च न्यायालय द्वारा उक्त रिट याचिका में पारित आदेश प्रदर्श ए-2 से यह स्पष्ट है कि प्रार्थी पुन: अपनी सेवा से अनुपस्थित हो गया तथा इस आधार पर प्रार्थी की सेवा पुन: समाप्त कर दी गई। प्रार्थी के सेवा समाप्त आदेश प्रदर्श-2 से भी यह तथ्य प्रमाणित होते हैं। अप्रार्थी नियोजक ने अपनी इस सेवा समाप्ति आदेश प्रदर्श-2 में स्पष्ट रूप से यह उल्लेख किया है कि प्रार्थी पुन: दिनांक 14-6-1999 से लगातार स्वेच्छा से कार्य से अनुपस्थित चल रहा है। इस आदेश में यह भी उल्लेख किया गया है कि यह स्पष्ट होता है कि प्रार्थी ने स्वेच्छा से दैनिक वेतन भोगी सेवा त्याग दी है और इस आधार पर अप्रार्थी नियोजक ने प्रार्थी की सेवाएं तुरन्त प्रभाव से समाप्त कर दी ।

9 उक्त विवेचन के आधार पर यह तथ्य प्रमाणित है कि अप्रार्थी नियोजक ने प्रार्थी की सेवा समाप्ति का आदेश प्रदर्श-2 इस आधार पर पारित किया कि प्रार्थी लम्बे समय से अनुपस्थित चल रहा है। इस आधार पर अप्राथी नियोजक ने यह मान लिया है कि प्रार्थी ने अपनी सेवा स्वेच्छापूर्वक त्याग दी। हमारी यह राय है कि केवल लम्बी अनुपस्थिति के आधार पर प्रार्थी की सेवा समाप्त नही की जा सकती। हमारी यह राय है कि इसके सम्बन्ध में अप्रार्थी नियोजक द्वारा प्रार्थी को नोटिस देना चाहिये था तथा उसके विरुद्ध विभागीय अथवा अनुशासनिक कार्यवाही प्रारम्भ करनी चाहिये थी और तत्पश्चात् उसके विरुद्ध लम्बी अनुपस्थिति का आरोप प्रमाणित होने के उपरान्त ही उसे सेवा से पृथक किया जा सकता था। पत्रावली पर यह साक्ष्य नहीं है कि अप्रार्थीगण ने प्रार्थी की अनुपस्थिति के सम्बन्ध में प्रार्थी को कोई सूचना-पत्र दिया हो और उसके विरुद्ध कोई विभागीय अथवा अनुशासनिक कार्यवाही की गई हो।

10. अप्रार्थी नियोजक ने प्रार्थी की सेवा समाप्ति के आदेश में प्रार्थी को नोटिस अवधि के लिए एक माह की दैनिक मजदूरी की राशि 1144 रुपये तथा दिनांक 1-6-1999 से 12-6-1999 तक की दैनिक वेतन मजदूरी की राशि 426 रुपये कुल 1570 रुपये दिलाये जाने का भी उल्लेख किया है तथा इस राशि का डिमाण्ड ड्राफ्ट भी प्रार्थी को भेजा है। विद्वान प्रतिनिधि अप्रार्थीगण का यह तर्क रहा है कि प्रार्थी को नोटिस अवधि का वेतन देकर अप्रार्थी नियोजक ने औद्योगिक विवाद् अधिनियम को धारा 25-एफ की पालना कर दी है। विद्वान प्रतिनिधि प्रार्थी का यह तर्क रहा है कि अप्रार्थी नियोजक ने प्रार्थी को नियमानुसार छंटनी मुआवजा अदा नहीं किया है और ऐसी स्थिति में प्रार्थी की सेवा समाप्ति औधोगिक विवाद् अधिनियम की धारा 25-एफ के प्रावधानों के विपरीत प्रमाणित होती है।

11. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया। हमने ऊपर उल्लेख किया है कि अप्रार्थी नियोजक ने प्रार्थी की सेवा समाप्ति का आदेश उसकी लम्बी अनुपस्थिति के आधार पर पारित किया है। हमने ऊपर यह भी उल्लेख किया है कि अप्रार्थी नियोजक को प्रार्थी की इस लम्बी अनुपस्थिति के सम्बन्ध में एक कारण बताओ सूचना-पत्र देना चाहिये था तथा इसके सम्बन्ध में विभागीय अथवा अनुशासनिक जांच प्रारम्भ की जानी चाहिये थी। पत्रावली पर ऐसी कोई साक्ष्य नहीं है जिसके आधार पर यह माना जा सके कि अप्रार्थी नियोजक ने ऐसा कुछ किया हो। प्रार्थी ने अपने मांग-पत्र तथा शपथ-पत्र में स्पष्ट रूप से उल्लेख किया है कि वह मुख्यालय परित्याग की अनुमति लेकर गया और उसने समय-समय पर अवकाश बढ़ाने बाबत निवेदन किया तथा उसने अप्रार्थी नियोजक को तार तथा टेलीफोन आदि से भी सूचना दी थी। प्रार्थी ने इसके सम्बन्ध में रोग प्रमाण-पत्र प्रदर्श-3 लगायत प्रदर्श-6, तार की प्रति प्रदर्श-8 तथा पोस्टल रसीद प्रदर्श-9 लगायत प्रदर्श-10 पेश किए हैं। इन परिस्थितियों में हमारी यह राय है कि अप्रार्थी नियोजक को प्रार्थी श्रमिक की सेवा समाप्त करने के पूर्व प्रार्थी श्रमिक को उसकी अनुपस्थिति के सम्बन्ध में कारण बताने के लिए सूचना-पत्र देना चाहिये था तथा इसके आधार पर विभागीय अथवा अनुशासनिक कार्यवाही की जानी चाहिये थी। अप्रार्थीगण ने ऐसा नहीं किया है। पत्रावली पर उपलब्ध साक्ष्य से यह तथ्य प्रमाणित है कि प्रार्थी की प्रथम नियुक्ति दिनांक 15-7-1989 को की गई थी तथा प्रार्थी ने अप्रार्थी नियोजक को यहां दिनांक 31-4-1992 तक कार्य किया था उसके पश्चात् प्रार्थी की सेवा समाप्त कर दी गई थी उस सेवा समाप्ति को श्रम न्यायालय के द्वारा अवैध घोषित कर दिया गया था प्रार्थी को सेवा में पुनर्स्थापित करने का आदेश दिया था। इस आदेश की अनुपालन में अप्रार्थी नियोजक ने प्रार्थी को दिनांक 8-5-1997 को पुन: सेवा में ले लिया था। प्रार्थी की सेवा निरन्तर भी मानी थी। ऐसी स्थिति में हमारी यह राय है कि अप्रार्थी नियोजक द्वारा प्रार्थी को एक माह के नोटिस वेतन के साथ-साथ छंटनी मुआवजा अदा करना चाहिये था। अप्रार्थी नियोजक ने प्रार्थी को छंटनी मुआवजा अदा नहीं किया है और ऐसी स्थिति में प्रार्थी की सेवा समाप्ति प्रदर्श-2 अवैध तथा अनुचित प्रमाणित होती है।

12. अब यह देखना है कि प्रार्थी क्या अनुतोष प्राप्त करने का अधिकारी है? श्रम विवाद् संख्या 5 सन् 1994 में पारित अधिनिर्णय दिनांक 2-5-1997 प्रदर्श-1 से यद्यपि यह प्रमाणित नहीं होता है कि प्रार्थी उस समय लम्बे समय तक अनुपस्थित रहा, लेकिन उस अधिनिर्णय में यह तथ्य स्पष्ट रूप से आया है कि अप्रार्थी नियोजक ने प्रार्थी की सेवा समाप्ति प्रार्थी की लम्बी अनुपस्थिति के कारण की थी। अप्रार्थी नियोजक ने इस अधिनिर्णय की पालना में प्रार्थी को दिनांक 8-5-1997 को सेवा में पुनर्स्थापित कर दिया था, लेकिन प्रार्थी दिनांक 14-6-1999 से पुन: अनुपस्थित हो गया। प्रार्थी की सेवा समाप्ति का आदेश दिनांक 3-3-2000 है। माननीय राजस्थान उच्च न्यायालय द्वारा पारित आदेश प्रदर्श ए-2 से भी यह स्पष्ट है कि अप्रार्थी नियोजक ने प्रार्थी की सेवा समाप्ति उसी लम्बी अनुपस्थिति के कारण की थी। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी यह

राय है कि प्रार्थी लम्बे समय तक अपनी ड्यूटी से अनुपस्थित रहने का आदी रहा है। प्रकरण की परिस्थितियों को देखने से यह भी प्रतीत होता है कि प्रार्थी ने अप्रार्थी नियोजक का विश्वास खो दिया है। प्रार्थी ने अपनी प्रतिपरीक्षा में सन् 1987 में अपनी आयु 25 वर्ष बताई है। अब तक प्रार्थी 51 वर्ष की आयु प्राप्त व्यक्ति हो गया है। प्रार्थी दैनिक वेतन भोगी कर्मचारी के पद पर था। प्रार्थी का कार्य श्रम से संबंधित है और ऐसी स्थिति में प्रार्थी को सेवा में पुनर्स्थापित किये जाने का आदेश पारित करना उचित नहीं होगा। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् प्रार्थी को सेवा में पुनर्स्थापित करने के आदेश के स्थान पर प्रार्थी को एकमुश्त क्षतिपूर्ति दिलाया जाना उचित है। समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् प्रार्थी को नियोजक से रुपये 25,000 (पच्चीस हजार रुपये) क्षतिपूर्ति दिलाया जाना उचित है।

आदेश

13. अत: यह अधिनिर्णित किया जाता है:—

(1) प्रार्थी श्रमिक श्री रामप्रकाश देवल पुत्र श्री आवड़दान देवल को अप्रार्थी नियोजकगण द्वारा दिनांक 3-3-2000 से सेवामुक्त किया जाना उचित तथा वैध नहीं है।

(2) प्रकरण की परिस्थितियों को देखते हुए प्रार्थी को सेवा में पुनर्स्थापित किया जाना उचित नहीं होने से प्रार्थी अप्रार्थी नियोजक से सेवा में पुनर्स्थापित किये जाने के स्थान पर क्षतिपूर्ति के रूप में रुपये 25,000 (पच्चीस हजार रुपये) प्राप्त करने अधिकारी घोषित किया जाता है।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 28 अगस्त, 2012

का. आ. 3001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दी प्रेसीडेन्ट, मैस कमेटी, आर्मी एरिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जोधपुर के पंचाट (संदर्भ संख्या 07/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार का 28-08-2012 प्राप्त हुआ था।

[सं. एल.-14012/12/2008-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 3001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. Case no. 07/2009) of the Industrial Tribunal-cum-Labour Court Jodhpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of the President, Mess Committee, Army Area, and their workman, which was received by the Central Government on 28-08-2012.

[No. L-14012/12/2008-IR (DU)]

SURENDRA KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी:- श्री एच.आर. नागौरी, आर.एच.जे.एस. औद्योगिक विवाद (केन्द्रीय) संख्या:-7 सन् 2009

श्री प्रेमाराम पुत्र श्री शिवराम भील निवासी राईका बाग, पुरानी पुलिस लाईन, जोधपुर।

...प्रार्थी

बनाम

दी प्रेसिडेन्ट मैस कमेटी, कोनार्क ऑफिसर्स मैस, आर्मी एरिया, जोधपुर।

...अप्रार्थी

उपस्थिति:—

(1) प्रार्थी के प्रतिनिधि-श्री विवेक शाह उपस्थित।

(2) अप्रार्थी के प्रतिनिधि श्रीमति शशिलता मित्तल उपस्थित।

अधिनिर्णय

दिनांक 25-10-2011

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल. 14012/12/2008-आई.आर. (डी.यू.) नई दिल्ली दिनांक 16-2-2009 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है:—

"Whether the action of the management of President, Mess Committee, Konark Officers Mess, Jodhpur in terminating the services of their workman Shri Prem Ram *w.e.f.* 01-01-2007 is legal and justified? If not, what relief the workman is entitled to?"

2. प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि प्रार्थी की नियुक्ति अप्रार्थी के संस्थान में दिनांक 24-1-2006 को अस्थाई श्रमिक के रूप में माली के पद पर की गई। वहां प्रार्थी ने 1-1-2007 तक निरन्तर कार्य किया। अप्रार्थी संस्थान ने मौखिक आदेश के द्वारा प्रार्थी को दिनांक 1-1-2007 को सेवा से पृथक कर दिया। प्रार्थी ने एक वर्ष में तथा सेवापृथकता के पूर्व एक वर्ष में 240 दिनों से अधिक दिनों तक कार्य कर लिया था। प्रार्थी श्रमिक को सेवा से पृथक करने के पूर्व अप्रार्थी ने प्रार्थी को एक माह का नोटिस नहीं दिया, नोटिस की एवज में नोटिस वेतन तथा छंटनी मुआवजा भी नहीं दिया। केन्द्रीय सरकार को छंटनी की सूचना भी नहीं दी गई। वरीयता सूची भी नियमानुसार प्रकाशित नहीं की गई। प्रार्थी कनिष्ठतम श्रमिक नहीं था। प्रार्थी को सेवा से पृथक करने के पश्चात् अप्रार्थी नियोजक ने नई नियुक्तियां दी, लेकिन प्रार्थी को कोई ऑफर नहीं दी गई। प्रार्थी ने यह उल्लेख किया है कि उसकी सेवापृथकता औद्योगिक विवाद अधिनियम के प्रावधानों के प्रतिकूल है। अप्रार्थी विरुद्ध

ने औद्योगिक विवाद अधिनियम की धारा 25-एफ तथा 25-जी के प्रावधानों का उल्लंघन किया है। प्रार्थी की सेवा समाप्ति अनफेयर लेबर प्रैक्टिस की तारीफ में आती है।

3. प्रार्थी ने यह उल्लेख किया है कि उसने अप्रार्थी संस्थान के व्यवस्थापक से बार-बार निवेदन किया कि प्रार्थी को पुनः काम पर ले ले। उन्होंने प्रार्थी को कार्य पर पुनः लेने से मना कर दिया। उक्त आधारों पर प्रार्थी ने यह प्रार्थना की है कि उसे सेवा की निरन्तरता में देय वेतन तथा भत्तों के साथ पुनः सेवा में स्थापित किया जावे। सेवापृथकता की तिथि से उसे वापस नियोजित करने की तिथि तक का सम्पूर्ण लाभ 18 प्रतिशत वार्षिक ब्याज सहित दिलाया जावे।

4. अप्रार्थी ने अपने प्रत्युत्तर में यह उल्लेख किया है कि इस प्रकरण पर औद्योगिक विवाद अधिनियम के प्रावधान लागू नहीं होते हैं। आर्मी मैस एक प्राईवेट ऑर्गेनाईजेशन है। यह मैस कमेटी के सुपरविजन में संचालित होती है। यह एक नोन कामर्शियल ऑर्गेनाईजेशन है। यह इसके सदस्यों द्वारा दिये गये अंशदान से ही संचालित होती है। इस संस्थान में कार्यरत किसी भी कर्मचारी को भुगतान उपरोक्त अंशदान में से ही किया जाता है। यह संस्था औद्योगिक विवाद अधिनियम की परिधि में नहीं आती है। अप्रार्थी ने उल्लेख किया है कि औद्योगिक विवाद अधिनियम, 1947 की धारा 2 की उपधारा (घ) के परन्तुक (1) में स्पष्ट प्रावधान किया गया है कि वायु सेना अधिनियम 1950 तथा सेवा अधिनियम 1950 या नौ सेना अधिनियम 1957 के अधीन कार्यरत् कर्मचारियों तथा श्रमिकों पर औद्योगिक विवाद अधिनियम, 1947 के प्रावधान लागू नहीं होते हैं। अप्रार्थी विभाग पर सेना अधिनियम, 1950 के प्रावधान लागू होते हैं। अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी द्वारा अप्रार्थी के अधीन कुछ समय दैनिक मजदूरी पर कार्य किया गया है। यदि यह मान भी लिया जाए कि प्रार्थी ने कुल अन्तराल में दैनिक मजदूरी पर कार्य भी किया है तब भी औद्योगिक विवाद अधिनियम, 1947 की धारा 2(घ)(1) के अन्तर्गत प्रार्थी का क्लेम प्रार्थना-पत्र सेना अधिनियम, 1950 से बाधित है।

5. अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी को अप्रार्थी द्वारा दिनांक 24-1-2006 अथवा इसके पूर्व या पश्चात् कभी कोई नियुक्ति नहीं दी गई। अप्रार्थी विभाग के अधीन किसी कार्यालय में किसी भी कर्मचारी को मौखिक रूप से कोई नियुक्ति नहीं दी जाती है। प्रार्थी का यह कथन असत्य है कि उसने दिनांक 1-1-2007 तक निरन्तर कार्य किया। अप्रार्थी न तो प्रार्थी का नियोक्ता है और न ही प्रार्थी अप्रार्थी का कर्मचारी है। अप्रार्थी तथा प्रार्थी के मध्य नियोक्ता तथा श्रमिक का कोई सम्बन्ध नहीं है। अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी द्वारा जिस प्रकृति का कार्य किया जा रहा था उसकी आवश्यकता नहीं होने से अप्रार्थी ने दिनांक 31-12-2006 के पश्चात् प्रार्थी से कार्य लेना बन्द कर दिया। प्रार्थी का यह कथन मिथ्या है कि उसके द्वारा कोनार्क ऑफिसर्स मैस में स्थित बगीचे में माली के पद पर कार्य किया जाता था। अप्रार्थी ने उल्लेख किया है कि वास्तविक तथ्य इस प्रकार है कि कोनार्क ऑफिसर्स मैस में स्थित गार्डन की देख रेख विभागीय स्तर पर या विभागीय कोष से नहीं की जाती है बल्कि कोनार्क ऑफिसर्स मैस के सदस्यों द्वारा इस कार्य हेतु दिये गये अंशदान से ही की जाती है। कोनार्क ऑफिसर्स मैस में सदस्यता ग्रहण करने वाला सदस्य इस हेतु अंशदान देता है और उक्त एकत्रित अंशदान से इस मैस में स्थित गार्डन की देखरेख की जाती है तथा गार्डन की देखरेख हेतु कोनार्क ऑफिसर्स मैस की कमेटी बनी हुई है। जो अस्थाई रूप से किसी बागवान को रखती है। इस कार्य में विभाग का कोई दखल नहीं है। प्रार्थी को केवल गार्डन की देखरेख हेतु अस्थाई रूप से निश्चित मानदेय पर रखा गया था। इसका भुगतान कोनार्क ऑफिसर्स मैस के सदस्यों द्वारा दिये गये अंशदान से दिया जाता है न कि अप्रार्थी विभाग द्वारा या केन्द्रीय सरकार के किसी कोष से दिया जाता है। अप्रार्थी प्रार्थी का नियोक्ता नहीं है। प्रार्थी ने अप्रार्थी विभाग के अधीन कोई कार्य नहीं किया है। यदि प्रार्थी ने कोई कार्य किया भी है तो वह कोनार्क ऑफिसर्स मैस के सदस्यों द्वारा बनाई गई मैस के अधीन किया है। कोनार्क ऑफिसर्स मैस में निर्मित गार्डन की देखरेख का जिम्मा अप्रार्थी विभाग का नहीं है।

6. अप्रार्थी ने उल्लेख किया है कि प्रार्थी को किसी प्रकार का नोटिस अथवा नोटिस के एवज में अग्रिम वेतन दिये जाने की आवश्यकता नहीं है। प्रार्थी द्वारा किये गये कार्य की प्रकृति तथा आर्मी एक्ट 1950 के प्रावधानों के अनुसार इस मामले में औद्योगिक विवाद अधिनियम के प्रावधान की पालना किया जाना आवश्यक नहीं था। प्रार्थी स्वच्छ हाथों से न्यायालय के समक्ष नहीं आया है। उसने वास्तविक तथ्यों को छिपाया है।

7. अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी द्वारा अप्रार्थी को कभी कोई प्रतिवेदन नहीं दिया गया और न ही कभी कोई निवेदन किया गया। प्रार्थी का यह कथन असत्य है कि उसकी सेवा समाप्ति गैर कानूनी तथा निष्प्रभावी है। यह भी उल्लेख किया है कि यह असत्य है कि ऐसा करना अनफेयर लेबर प्रैक्टिस की तारीफ में आता है। आर्मी एक्ट, 1950 के तहत इस प्रकार की नियुक्तियों का कोई प्रावधान नहीं है। आर्मी रूल्स, 1950 के तहत निर्दिष्ट प्रावधानों के तहत ही स्थाई नियुक्तियां की जाती है। प्रार्थी का प्रार्थना-पत्र कानूनन बाधित है। इन आधारों पर अप्रार्थी ने प्रार्थी के माँग-पत्र को निरस्त करने की प्रार्थना की।

8. प्रार्थी ने अपने मांग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया। प्रार्थी पी०डब्ल्यू-1 श्री प्रेमाराम से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में पास की फोटो प्रति प्रदर्श-1, पत्र प्रदर्श-2, पत्र प्रदर्श-3, पत्र प्रदर्श-4 तथा असफल वार्ता प्रतिवेदन पत्र प्रदर्श-5 को पेश कर प्रदर्श करवाये गये। अप्रार्थी की ओर से श्री आलोक कुमार का शपथ-पत्र प्रस्तुत किया गया। डी.डब्ल्यू-1 श्री आलोक कुमार से प्रतिपरीक्षा की गई। प्रलेखीय साक्ष्य में रसीद प्रदर्श ए-1 लगायत प्रदर्श-ए-10, प्रस्तुत की गई।

9. बहस उभय-पक्ष सुनी गई। पत्रावली का अवलोकन किया गया। पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है।

10. प्रार्थी ने अपने मांग-पत्र में प्रेसिडेन्ट, मैस कमेटी कोनार्क ऑफिसर्स मैस आर्मी एरिया, जोधपुर को पक्षकार बताया है। प्रार्थी ने अपने मांग-पत्र में अपना नियोक्ता भी इसी को बताया है। अप्रार्थी की ओर से प्रस्तुत माँग-पत्र के जवाब में गलत रूप से यह तथ्य उल्लेख किया है कि प्रार्थी ने भारतीय सेना अथवा भारतीय सेना के किसी अधिकारी को अपना नियोक्ता बताया है। प्रार्थी ने अपने मांग-पत्र में कहीं पर भी यह उल्लेख नहीं किया है कि उसका नियोक्ता भारतीय सेना अथवा

भारतीय सेना का कोई अधिकारी है। प्रार्थी ने कहीं पर भी यह उल्लेख नहीं किया है कि भारतीय सेना का विभाग प्रार्थी का नियोक्ता है और वह उसका कर्मचारी था। प्रार्थी ने अपने मांग-पत्र में कहीं पर भी यह उल्लेख नहीं किया है कि उसका भुगतान सेना विभाग के स्तर पर अथवा सेना विभाग के कोष से किया जाता था। अप्रार्थी की ओर से प्रस्तुत जवाब में यह उल्लेख किया गया है कि कोनार्क ऑफिसर्स मैस की कमेटी बनी हुई है और इस मैस के गार्डन की देख-रेख हेतु किसी बागवान को इस मैस कमेटी द्वारा लगाया जाता है। अप्रार्थी के इस जवाब में यह उल्लेख किया गया है कि प्रार्थी को इस गार्डन की देख-रेख हेतु अस्थाई रूप से निश्चित मानदेय पर इस मैस कमेटी द्वारा लगाया गया था। प्रार्थी ने अपने मांग-पत्र में यही उल्लेख किया है कि उसकी नियुक्ति अप्रार्थी कोनार्क ऑफिसर्स मैस की मैस कमेटी के प्रसिडेन्ट के जरिये की गई थी।

11. इस प्रकार अप्रार्थी ने प्रार्थी के मांग-पत्र के प्रत्युत्तर में प्रस्तुत जवाब में यह तथ्य स्पष्ट कर दिया है कि प्रार्थी भारतीय सेना का कर्मचारी नहीं होकर कोनार्क ऑफिसर्स मैस की कमेटी का कर्मचारी है। अप्रार्थी ने यह स्वीकार किया है। कि प्रार्थी के वेतन का भुगतान भारतीय सेना अथवा भारतीय सेना के कोष से नहीं किया जाता है बल्कि कोनार्क ऑफिसर्स मैस के सदस्यों के अंशदान से प्राप्त होने वाली राशि में से किया जाता है। प्रार्थी के मांग-पत्र में उल्लेख किये गये तथ्यों का भी यही तात्पर्य है। विद्वान प्रतिनिधि प्रार्थी ने हमारे समक्ष विचार के लिए निम्न दो विधिक दृष्टांत प्रस्तुत किये हैं :—

1. Union of India and Anothers Vs. Chotelal and Others (1999) 1 Supreme Court Cases Page 554 माननीय न्यायालय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है :—

> "Service Law- Administrative Tribunals Act, 1985-S.14(1)(a)-Civil Post-Dhobis appointed to wash the clothers of cadets at NDA, Khadakwasle and being paid from Regimental Fund-Held, Regimental Fund not a 'public fund' as defined in para 801 of Defence Services Regulation and dhobis paid out of Regimental Fund cannot be treated as holders of civil posts within the Ministry of Defence so as to confer jurisdiction of CAT to issue directions relating to their service conditions-Although Commanding Officer exercises some control over such dhobis but on that score alone it cannot be concluded that the posts are civil posts and that payments to the holders of such posts is made from out of the Consolidated Fund of India or of any public fund under the control of the Ministry of Defence. Defence Services Regulation, Paras 801 and 820(a)"

2. R.R. Pillai Vs. Commanding Officer, Headquarters Southern Air Command (U) and Others (2010) 1 Supreme Court Cases (L&S) Page 241 माननीय न्यायालय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है:—

> A. Armed Forces-Unit-Run Canteens (URCs) in Army, Navy and Air Force-Status of employees working in-Whether government servants-M. Aslam case, (2001) 1 SCC 720, held wrongly decided that they are governemnt servants-URCs are not funded from Consolidated Fund of India (CFI) and profits of URCs are also not credited to CFI-URCs are also not part of the Canteen Stores Department (CSD)-Interest is charged on financial assistance given to URCs-They are also free to borrow from other financial institutions-M. Aslam case also wrongly distinguished Chotelal case, (1999) 1SCC 554-Though employees are initially appointed as temporary employees on probation and in due course are declared as permanent, yet they do not become government employees-M. Aslam case therefore overruled and held, employees of URCs are not government employees-Rules Regulating the Terms and Conditions of Service of Civilian Employees of Air Force Unit-Run Canteen Paid out of Non-Public Funds."

12. हमने उक्त विधिक दृष्टांतों पर विचार किया। मांग-पत्र में उल्लेख किये गये तथ्यों तथा मांग-पत्र के प्रत्युत्तर में उल्लेख किये गये तथ्य एवं उक्त विधिक दृष्टांतों में प्रतिपादित सिद्धांतों के परिप्रेक्ष्य में हमारी यह राय है कि प्रार्थी राजकीय कर्मचारी नहीं है। प्रार्थी रक्षा मंत्रालय के अन्तर्गत किसी सिविल पोस्ट को धारित नहीं करता है। प्रार्थी को किसी पब्लिक फण्ड से वेतन नहीं दिया जाता है बल्कि प्रार्थी को वेतन का भुगतान रेजीमेन्टल फण्ड से किया जाता है। रेजीमेन्टल फण्ड पब्लिक फण्ड नहीं है। अप्रार्थी के साक्षी डी.डब्ल्यू-1 श्री आलोक कुमार ने अपनी प्रतिपरीक्षा में भी इस तथ्य को सही बताया है कि रसीद प्रदर्श ए-1 लगायत प्रदर्श-10 के द्वारा प्रार्थी को भुगतान कोनार्क मैस कमेटी द्वारा माली के पद के लिए किया गया था। इस साक्षी ने कहा है कि यह मैस नोन पब्लिक फण्ड के द्वारा संचालित होती है। इस साक्षी ने यह तथ्य स्वीकार किया है कि इस मैस के जो आर्मी अधिकारी सदस्य होते थे वे अपना अंशदान देते थे तथा प्रार्थी को भुगतान इसी अंशदान में से किया जाता था। इस साक्षी ने यह भी उल्लेख किया है कि मैस द्वारा कुछ ऐसे कामों के लिए नियुक्ति दी जाती है और उनके लिये मैस फण्ड से ही अलग से भुगतान किया जाता है और इस पर आर्मी अधिनियम लागू नहीं होता है। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी सेना अधिनियम, 1950 के अन्तर्गत नियोजित कर्मचारी नहीं है।

13. हमने उपर उल्लेख किया है कि प्रार्थी को रेजीमेन्टल फण्ड से वेतन का भुगतान किया जाता था। इस रेजीमेन्टल फण्ड से आर्मी के कर्मचारियों के लिए अनेक गतिविधियां चलाई जाती है। इसमें से मैस एक गतिविधि है। इस फण्ड से केन्टीन तथा अन्य गतिविधियां भी चलाई जाती है। इससे रेजीमेन्टल फण्ड में बढ़ोतरी होती है और लाभ भी उत्पन्न होता है। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में उक्त मैस की व्यवसायिक गतिविधियां हैं। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में अप्रार्थी संस्थान मैस कमेटी एक उद्योग की परिभाषा में आती है।

14. प्रार्थी ने अपने मांग-पत्र में यह उल्लेख किया है कि उसने अप्रार्थी संस्थान में दिनांक 24-1-2006 से 1-1-2007 तक कार्य किया

है। अप्रार्थी ने मांग-पत्र के प्रत्युत्तर में इन तथ्यों को अस्वीकार नहीं किया है । अप्रार्थी ने केवल यह उल्लेख किया है कि प्रार्थी को अप्रार्थी द्वारा दिनांक 24-1-2006 को या इसके पूर्व या पश्चात् कभी कोई नियुक्ति नहीं दी गई है। अप्रार्थी ने यह उल्लेख किया है कि इस कोनार्क ऑफिसर्स मैस में सदस्यता ग्रहण करने वाला सदस्य इसमें अंशदान देता है तथा एकत्रित अंशदान में से मैस में स्थित गार्डन की देख-रेख की जाती है। कोनार्क ऑफिसर्स मैस की एक कमेटी बनी हुई है और वह अस्थाई तौर पर किसी बागवान को कार्य पर लगाती है। अप्रार्थी ने यह उल्लेख किया है कि प्रार्थी द्वारा जिस प्रकृति का कार्य किया जा रहा था उसकी आवश्यकता नहीं होने से दिनांक 31-12-2006 के पश्चात् प्रार्थी से कार्य लेना बन्द कर दिया गया।

15. अप्रार्थी ने मांग-पत्र के प्रत्युत्तर में आर्मी के एक अधिकारी की तरह प्रत्युत्तर दिया है। प्रार्थी ने अपने मांग-पत्र में कोनार्क ऑफिसर्स मैस की मैस कमेटी के प्रेसिडेन्ट को ही पक्षकार बनाया है। रेफरेन्स में भी कोनार्क ऑफिसर्स मैस कमेटी के प्रेसिडेन्ट ही पक्षकार हैं। अप्रार्थी की ओर से यह प्रकरण इस तरह लड़ा गया है जैसे कि प्रार्थी ने इसमें सैना अथवा प्रतिरक्षा विभाग को पक्षकार बनाया हो। प्रार्थी ने सैना अथवा प्रतिरक्षा विभाग को पक्षकार नहीं बनाया है। प्रार्थी ने कोनार्क ऑफिसर्स मैस की मैस कमेटी को ही पक्षकार बनाया है। अप्रार्थी ने अपने प्रत्युत्तर में यह तथ्य स्वीकार किया है कि कोनार्क ऑफिसर्स मैस के सभी सदस्य इसके क्रियाकलापों के लिए अंशदान देते हैं तथा इस मैस कमेटी के द्वारा इस मैस के परिसर में स्थित गार्डन की देख-रेख हेतु एक माली नियुक्त किया जाता है तथा उस माली को उक्त अंशदान में से वेतन का भुगतान किया जाता है। अप्रार्थी मैस कमेटी ने प्रार्थी को दिनांक 24-1-2006 को अपने यहां माली के पद पर नियुक्त किया तथा प्रार्थी ने वहां दिनांक 1-1-2007 तक निरन्तर कार्य किया। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में औद्योगिक विवाद अधिनियम की धारा 25-बी के प्रावधानों के अनुसार प्रार्थी की निरन्तर सेवा प्रमाणित होती है। पत्रावली पर यह साक्ष्य नहीं है कि प्रार्थी को अप्रार्थी मैस कमेटी द्वारा सेवा से पृथक करने के पूर्व औद्योगिक विवाद अधिनियम की धारा 25-एफ के प्रावधानों की पालना की। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी की सेवा समाप्ति अवैध तथा अनुचित प्रमाणित होती है।

16. प्रार्थी की सेवा समाप्ति दिनांक 1-1-2007 को की गई है। प्रार्थी ने करीब एक वर्ष तक अप्रार्थी मैस में कार्य किया है। प्रार्थी ने अपनी सेवा समाप्ति के सम्बन्ध में विवाद यथाशीघ्र उठा लिया है। समुचित सरकार ने इस विवाद को अपने आदेश दिनांक 16-2-2009 के द्वारा इस न्यायालय को सन्दर्भित कर दिया है। इस प्रकार प्रार्थी ने अपनी सेवा समाप्ति के विवाद को उठाने में कोई अनुचित विलम्ब नहीं किया है। प्रार्थी केवल 32 वर्ष की आयु का युवक है। वह भील जाति का है। वह अपनी इस सेवा से नियमित सेवा की अपेक्षा करता है। अत: समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्रार्थी को सेवा में पुनर्स्थापित किया जाना उचित है। प्रार्थी की सेवा निरन्तर मानी जायेगी। प्रार्थी ने अपनी सेवा समाप्ति से अब तक अपना तथा अपने परिवार का भरण-पोषण किया होगा। अत: समस्त परस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् प्रार्थी को अप्रार्थी मैस कमेटी से रेफरेन्स की तिथि से उसे सेवा में पुनर्स्थापित करने की तिथि तक की अवधि के वेतन का 25 प्रतिशत वेतन पूर्वभृति के रूप में दिलाया जाना समीचीन है।

आदेश

17. अत: यह अधिनिर्णित किया जाता है कि:—

(1) अप्रार्थी नियोजक प्रेसिडेन्ट, मैस कमेटी, कोनार्क ऑफिसर्स मैस, आर्मी एरिया, जोधपुर द्वारा प्रार्थी श्री प्रेमाराम पुत्र श्री शिवराम को दिनांक 01-01-2007 से सेवापृथक करना अनुचित तथा अवैध है।

(2) अप्रार्थी नियोजक प्रार्थी श्री प्रेमाराम पुत्र श्री शिवराम को तुरन्त सेवा में पुनर्स्थापित करे। प्रार्थी की सेवाएं उसकी सेवा समाप्ति की तिथि से सेवा में पुनर्स्थापित होने तक निरन्तर मानी जायेगी।

(3) प्रार्थी रेफरेन्स की तिथि से सेवा में पुनर्स्थापित होने तक की अवधि के वेतन की 25 प्रतिशत राशि पूर्वभृति के रूप में अप्रार्थी नियोजक से प्राप्त करने का अधिकारी है।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली, 28 अगस्त, 2012

का.आ. 3002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेशन कमान्डर, स्टेशन हेडक्आटर (आर्मी) कोटा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 67/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-08-2012 को प्राप्त हुआ था।

[सं. एल-14011/05/2007-आईआर(डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 3002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Case No. 67/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Station Commander, Station Headquarter (Army) Kota and others and their workman, which was received by the Central Government on 28-08-2012.

[No. L-14011/05/2007-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

PRESENT

N.K. PUROHIT

PRESIDING OFFICER

I.D. 67/2007

Reference No. L-14011/5/2007-IR(DU) dated: 29-10-2007

Shri Lala Ram
S/o Shri Nandlal Parihar
R/o House No. 83, Bajrang Nagar,
Baran Road, Kota (Rajasthan)

V/s

1. The Station Commander
Station Headquarter (Army)
Kota (Rajasthan).
2. The Manager
Ranbanka Purve Sainik Bahuddeshiye
Sahakari Samiti Ltd., Ballabh Nagar,
Kota (Rajasthan).

Present:

For the Applicant : Ex-Party
For the Non-applicant no. 2 : Ex-Party
For the Non-applicant no. 1 : Sh. T.P. Sharma, Adv.

AWARD

6-7-2012

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-Section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

"Whether the action of the management of (i) Station commander, Army HQrs. Kota and (ii) The Manager, Ranbanke Purve Sainik Bahuddeshiya Sahakari Samiti Ltd., Kota, in not giving one months notice or pay in Lieu of notice, to their workman Shri Lala Ram, before terminating his services w.e.f. 1-9-2005 is legal and justified? If not, to what relief the workman is entitled to?"

2. The workman in his claim statement has pleaded that the non-applicant no. 2 employed him as driver on 31-12-04 at Polyclinic, Kota. The workman had worked continuously as driver during period 1-1-05 to 1-9-05. He has further pleaded that he was forced to work during holidays & when he claim wages for the holidays, his services were terminated without any notice or compensation in lieu of notice. He has also pleaded that an amount of Rs. 7863.53 is due for bonus, PF etc as per details given in para 3 of the claim statement. The workman has prayed that non-applicant be directed to pay him the due amount of Rs. 7863.53 with 12% interest thereon & an amount of Rs. 50000 for mental agony caused to him.

3. The non-applicant no. 1 in his reply has denied the claim of the workman. It has been averred that non-applicant no. 2 was service provider to E.C.H.S, Polyclinic, Kota. The workman was never employed as driver by the non-applicant no. 1 instead he was employed by non-applicant no. 2. It has further been averred that as per agreement entered into between Station Headquarter, Kota & non-applicant no. 2, the workman provided his service at Polyclinic, Kota as driver w.e.f. 1-1-05 to 31-8-05 for which compensation due to the workman was released to the non-applicant no. 2. It has been denied that workman was forced to work after working hours & during holidays. It has been averred that the amount claimed for bonus, ESI contribution, Provident fund, if any has to be made by non-applicant no. 2. It has also been averred that since employer employee relation never existed between the workman & the non-applicant no. 1, the workman is not entitled to any relief from non-applicant no. 1.

4. Upon perusal of the proceedings, it reveals that on 29-11-10, Sh. Vijay Singh advocate appeared on behalf of the non-applicant no. 2 & filed his authority letter on 17-1-11 but on subsequent date i.e. 22-3-11, none appeared on behalf of the non-applicant no. 2, therefore, ex-party proceedings were drawn against non-applicant No. 2. On 11-8-11, the application on behalf of the non-applicant no. 2 for setting aside the ex-party proceedings was accepted & opportunity to file reply was given but on next date i.e. 19-11-11 none appeared on behalf of the non-applicant no. 2, therefore, again ex-party proceedings were drawn against the non-applicant no. 2. It further reveals that on 7-6-11, 11-8-11 & 19-11-11 non appeared on behalf of the applicant also, therefore, ex-party proceedings were drawn against the applicant on 19-11-11. Thereafter, the applicant did not turn up on subsequent dates 5-1-12, 20.3-12 & 30-4-12.

5. The learned representative on behalf of the non-applicant no. 1 submitted that since, the workman has not adduced any evidence in support of his claim & ex-party proceedings have been drawn against the workman & non-applicant no. 2 on 19-11-11, the non-applicant no. 1 does not want to lead any evidence.

6. Heard learned representative on behalf of the non-applicant no. 1.

7. Initial burden was on the workman to establish that his serves were terminated by the non-applicants w.e.f. 1-9-05 without giving one month's notice or pay in lieu of notice. The claim of the workman has been denied by the non-applicant no. 1. The workman has not adduced any oral evidence to substantiate his case set forth in the claim statement.

8. In above factual backdrop, it appears that the workman is not interested to contest the case further. Therefore,

"No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

9. Award as above.

10. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D. Act.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 28 अगस्त, 2012

का.आ. 3003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम डिस्ट्रिक्ट मैनेजर, सागर (मध्य प्रदेश) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी. जी.आई.टी./एल. सी./आर./126/00) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-8-2012 को प्राप्त हुआ था।

[सं. एल-40012/343/1999-आईआर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O.3003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/126/00) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Telecom District Manager, Sagar (MP) and their workman, which was received by the Central Government on 28-08-2012.

[No. L-40012/343/1999-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/126/00
PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Nandram Sahu,
S/o Shri Biharilal Sahu,
Vill. Aapchand,
Post Girvar, Distt. Sagar (MP) ...Workman

Versus

Telecom District Manager,
Sagar (MP) ...Management

AWARD

Passed on this 30th day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-40012/343/99/IR/(DU) dated 30-6-2000 has referred the following dispute for adjudieation by this tribunal:—

> "Whether the action of the management of Telecom District Manager, Sagar (MP) in terminating the services of Shri Nand Ram Sahu, casual Labour w.e.f. 13-7-90 is legal and justified? If not, to what relief the workman is entitled and from which date?"

2. The case of the workman, in short, is that he was engaged by the management as casual labour in the year 1985 and worked till 13-7-90 when he was terminated by verbal order. In the year 1985, he worked 289 days, in the year 1988-179 days, in the year 1989-365 days and till 13-7-90-188 days. He was not given temporary status as per the policy decision of the department. He was not given any retrenchment compensation nor any notice before termination. The action of the management is illegal and discriminatory in nature. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, inter alia, is that the alleged workman was engaged for project work on temporary basis and after completion of the work, further he was not engaged. He was engaged in the year 1986 for 129 days, in the year 1987 - Nil, in the year 1988-57 days, in the year 1989-122 days and in the year 1990-188 days only. In view of the policy of the department for giving temporary status, the alleged workman did not fulfill the requisite criteria. The had not worked 240 days in any year and he had left the work himself. Under the circumstances, he is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication—

I. Whether the action of the management in terminating the services of Shri Nand Ram Sahu, w.e.f. 13-7-90 is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. 1

The workman Nand Ram Sahu is examined in the case. The stated that he worked from 1985 and completed 240 days in the calendar year before termination on 13-7-1990. He has stated that copy of the identity card shows that he worked from 1985 and the daily attendance was recorded by the management. The said photocopy of identity card is not proved and the Original Identity Card is not filed. The workman has not given any reason in his evidence as to why the original identity card is not filed. When there is a document in existence and is available with the parties on a fact, the document itself is only to be taken to prove the particular fact. In absence of the original Identity Card, it is not proper to rely that the workman had worked for more than 240 days, in every calendar year specially 12 months

preceding the date with reference as provided under Section 25 B of the Industrial Disputes Act, 1947 (in short the Act, 1947). In cross-examination, he has stated that he was engaged in a project work. This shows that on completion of the project, he was terminated. Moreover his evidence is not sufficient to prove in absence of documentary evidence that his services was continuous service for a period of one year during a period of twelve calendar months preceding the date with reference under the provision of Section 25 B(2) of the Act, 1947. Thus the provision of Section 25-F of the Act, 1947 appears to be not violated.

6. On the other hand, the management has also adduced one witness. The management witness Shri R.G. Gohe is working as Divisional Engineer (Admn.) at Sagar. He has stated that the workman was engaged as casual labour in a project for laying down the telephone cable and as soon as the project is completed, the services were dispensed with the winding of the project. He has further stated that he had never worked 240 days in a calendar year. The workman has not cross-examined this witness. His evidence is unrebutted. There is no reason to disbelieve his evidence. His evidence shows that he was not in continuous service for a period of one year during the period of twelve calendar months prior to the date with reference under the provision of Section 25(B)(2) of the Act, 1947. This is evident that the provision of Section 25-F of the Act, 1947 is not violated. It is clear that the management was justified in terminating his service. This issue is decided against the workman and in favour of the management.

7. Issue No. II

On the basis of the discussion made above, it is clear that the workman is not entitled to any relief. Accordingly the reference is answered.

8. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 28 अगस्त, 2012

का.आ. 3004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, वैकिल फैक्ट्री के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी.जी. आई.टी./एल.सी./आर./164/95) को प्रकाशित करती है जो केन्द्रीय सरकार को 28-8-2012 को प्राप्त हुआ था

[सं. एल-42012/08/1995-आई आर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 28th August, 2012

S.O. 3004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/164/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the General Manager, Vehicle Factory and their workman, which was received by the Central Government on 28-08-2012.

[No. L-42012/08/1995-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/164/95

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Udainarayan Sahu,
S/o Shri Foolchand,
Qr. No. 600,
West Ghamapur,
Jabalpur (MP) ...Workman

Versus

General Manager,
Vehicle Factory,
Jabalpurr (MP) ...Management

AWARD

Passed on this 31st day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-42012/8/IR(DU) dated 5-8-1995 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the management of Vehicle Factory, Jabalpur (MP) in terminating the services of Shri Udainarayan Sahu, Ex-Turner "B" Ticket No. SEM/147/03600 w.e.f. 22-8-1987 is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. The case of the workman, in short, is that the workman Udai Narayan Sahu was working as Turner "B" Grade since 4-4-72. He was chargesheeted for the misconduct vide order dated 8-5-85 for (1) quarrel and abuse with co-workers inside the factory, (2) consumption of liquor inside the

factory, (3) Assaulting and Threatening co-workers and (4) entering the factory late by cheating the security staff. He submitted his reply but the management was not satisfied with the reply and initiated a departmental enquiry against him. Shri G. Mohan Singh Works Manager was appointed as Enquiry Officer and it is stated that the charge nos. 1 and 4 are said to have been proved and charge No. 2 was not proved and Charge No. 3, the allegation of assault was not proved. The Disciplinary authority agreed with the finding of the workman and passed the order of removal from service. It is stated that the findings of the E.O. is perverse and the punishment of removal from service awarded to the workman is disproprtionate to the charges alleged to have been proved. It is submitted that the order of removal from service be set aside and the workman be reinstated with back wages and consequential benefits.

3. The management appeared in the reference case but did not file Written Statement to plead his case. The original departmental enquiry papers were brought on the record on 2-3-05 by the management.

4. On the basis of the pleadings and reference order, the following issues are framed—

I. Whether the departmental enquiry conducted by the management against the workman is legal, valid and proper?

II. Whether the finding of the Enquiry Officer is perverse?

III. Whether the punishment of removal from service of the workman w.e.f. 22-8-1987 is disproportionate to the charges proved against him.

To what relief the workman is entitled?

5. Issue No.I

This issue was taken up as preliminary issue and after considering the evidence on record and hearing the parties this issue was decided on 31-1-2011. It is held that the departmental enquiry is legal and proper. Thus this issue is already earlier decided against the workman and in favour of the management.

6. Issue No. II

Now the important question is as to whether the findings of the Enquiry Officer is perverse and is required to be interfered. The departmental enquiry papers show that the management had examined eight witnesses before the Enquiry Officer and the witnesses had supported the charge No.I, IV and part of charge No. III. The finding of Enquiry Officer appears to be not perversed and in accordance with the evidence of the management and had also discussed the evidence of defence witnesses. He had finally come to the conclusion that (1) the quarrelling and abusing co-worker inside the factory during working hours, (2) threatening to co-worker and (3) entering the factory late by cheating or misrepresenting the security staff are proved against the workman. The Disciplinary Authority was also rightly agreed that the workman had committed miconduct of charges No. I, IV and partly charge No. III. No fresh evidence is adduced in the case. Thus I find that the finding of the Enquiry Officer is not perverse. This issue is decided against the workman and in favour of the management.

7. Issue No. III

Now the important point for consideration is as to whether the punishment of removal from services of the workman w.e.f. 22-8-87 specially when the major charges were found not proved, is disproportionate to the misconduct proved or not. It is an admitted fact that the charge No. 2- consumption of liquor inside the factory and part charge No. 3-assaulting to co-worker were found not proved and the Disciplinary Authority had also agreed with the findings of the Enquiry Officer and had not found him guilty in the aforesaid charges. The other charges, which are said to have been proved, are quarrelling, abusing and threatening to the worker and misepresenting the security staff for entering into the premises. The charges proved appear to be not serious in nature. It is clear from the evidence adduced before the Enquiry Officer that the abusive word was not disclosed and there was no subsequent result of such threatening which abvious for appears to be not seniors in nature. It appears that the punishment of removal from services appears to be not proportionate to the charges in which he was found guilty. As such this issue is decided in favour of the workman and against the management.

8. Issue No. IV

Considering the discussion made above, I am satisfied that the penalty of removing from services of the workman is not justified and is fit to be reduced to the penalty of compulsory retirement w.e.f. 22-8-87 under the provision of Section II A of the Industrial Disputes Act, 1947. Accordingly the management is directed to pass appropriate order with consequential benefits as per rules within two months from the date of award. Accordingly the reference is answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 29 अगस्त, 2012

का. आ. 3005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 53/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 24-8-2012 को प्राप्त हुआ था

[सं. एल-12012/20/2001/-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 29th August, 2012

S.O. 3005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. 53/2001) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 24-8-2012.

[No. L-12012/20/2001-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 10-08-2012

Present : Shri S. N. NAVALGUND, Presiding Officer

C.R. No. 53/2001

I PARTY	II PARTY
Shri Jakappa,	The Chief Manager
S/o Mayappa	Syndicate Bank
Savalagi PO,	Zonal Office
Bagalkot Distt.	Industrial Relation Cell,
Karnataka State	Bangalore

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute *vide* order No. L-12012/20/2001-IR(B-II) dated 13-08-2001 for adjudication on the following Schedule:

SCHEDULE

"Whether the action of the management of Syndicate Bank in relation to Savalagi Branch, Bagalkot District to terminate the services of Shri Jakappa S/o Shri M. Pujari, Pigmy agent w.e.f. 18-01-1999 is legal and justified? If not, what relief is the disputant workman entitled to?"

2. Shri Jakappa S/o Mayappa Pujari (hereinafter referred as first party) claims in his claim statement filed on 23-08-2002 that he was appointed as Pigmy Agent in Savalagi Branch of the Syndicate Bank (hereinafter referred as second party) in the year 1987 and that he was working sincerely and diligently to the best satisfaction of the bank officials and that he was getting a salary of Rs. 3000 per month as remuneration and it was the only source of his livelihood and his nature of work was to collect pigmy deposit from various customers by visiting their places of work or residence and to remit the collected amount in the bank and that abruptly he was served with the letter of termination dated 18-01-1999 without serving any charge sheet or holding any enquiry as such the said action of the management is illegal, unjust and against the principles of natural justice. He also further contended since he had worked for a period more than 240 days in each calendar year from 1987 till the date of termination of his services the action of the management in terminating his services is nothing but retrenchment as defined under Section 2(oo) read with Section 25F(a) and (b) of the I.D. Act and thereby liable to be set aside. Inter alia the second party in its counter statement filed on 4-06-2003, while admitting that first party was appointed as Pigmy Agent for its Savalagi branch for collection of pigmy or Adarash deposit and that first party agreed to the terms and conditions of the engagement as a Pigmy Agent affixing his signature to the letter issued to him on 27-04-1987 according to which he was only an agent for collection of Pigmy deposit and not for any other purpose or business of the bank and that he would be paid commission on the amount so deposited with the bank as such the relation between the second party and the first party was that of Principal and Agent and not that of Employer and Employee or Master and Servant. It is further contended since the first party was not adhering to the terms of the agreement and failed to deposit the collections made by him in the Bank in the beginning of the cash hours, several letters/notices were issued to him for his default in making remittance in the Bank and inspite of it he continued to remit the collections only towards the closing hours of the business as such by a letter dated 24-11-1997 he was called upon the remit the collections made by him on 31-10-1997, 1-11-1997 and 2-11-1997 and to that letter while admitting default on his part in not remitting the amount collected by him by his letter dated 24-11-1997 remitted the collection only at 1.45 pm; that on receiving reports that he did not deposit a sum of Rs. 10,000 received by him from Shri G. R. Yennennavar towards a crop loan overdraft account which amount he was not supposed to receive as a Pigmy Agent, a letter was issued to him on 6-03-1998 calling upon him to deposit the

said amount and when he did not deposit the same after a considerable period, the Divisional Office of the bank under whose control the branch was working issued a letter dated 1-04-1998 advising the first party to remit the amount towards the loan accounts and also to adhere to the rules of pigmy collection by remitting the case at the commencement of the business hours of the bank otherwise his agency will be terminated and thereafter the first party failed to make collections as such he was served with a reminder dated 13-06-1998 on which he submitted a letter dated 23-06-1998 assuring that he would remit the pigmy collection in time and he would pay Rs. 300 per month towards the loan account of Mr. Arjun G Yadav from out of the pigmy commission and also assured of remitting the loan amount collected from Shri G. R. Yennennavar. However, when there was no improvement on the part of the first party and when he failed to adhere to the rules of pigmy collection his agency came to be terminated according to the terms and conditions of the agreement. It is also contended the first party being not a workman as defined under the Industrial Dispute Act, 1947, he has no locus standi to raise such a dispute that too to cover his own fault giving an impression that his termination being due to union activities. Thus the management requested to reject the reference.

3. After completion of the pleadings when the matter was posted for evidence the second party while examining Shri Mohanty, Manager as MW1 got exhibited Agreement between the bank and the first party; eight letters issued to the first party informing him his lapses in collecting the amount from the customers; Letter dated 18-01-1999 issued by the second party cancelling his agency; letter dated 25-03-87 issued by the manager, Savalgi branch; appointment order dated 27-04-1987 engaging first party as an agent for collection of Pigmy/Adarsh deposits; reply letter of first party dated 29-05-1996; letter dated 24-11-1997 of first party; complaint given by one Mr. Gadigappa dated 5-03-1998 another complaint given by Shri Jadav, Management Representative; letter dated 29-07-1998 of first party; two letters of first party dated 23-6-1998 as Ext. M1 to M12 repsectively. Inter alia the first party while examining himself as WW1 did not produce any documentary evidence.

4. With the above pleadings and evidence my learned Predecessor after hearing the arguments addressed by the learned advocates appearing for both the sides by award dated 11-2-2008 had directed the second party to pay a sum of Rs. One lakh in lumpsum as compensation to the first party as full and final settlement of his claim. When the said award was challenged by the second party before the Hon'ble High Court of Karnataka in writ petition No.17110/2008(L-TER), the Hon'ble High Court by order dated 25-03-2009 while observing that several correspondences between the parties, several notices given to the first party and complaints received against him brought on record being not considered, simply jumping to the conclusion that there is no compliance of Section 25F of Industrial Disputes Act having proceed to pass the impugned award same is not justifiable, set aside the award and remitted back the matter to dispose off in accordance with law.

5. On remand by the Hon'ble High Court the reference was registered in its original number and the learned advocates appearing for both side addressed their arguments on the pleadings and evidence already brought on record.

6. The learned advocate appearing for the first party without referring to the correspondences, notice and complaints received against the first party and as to how the impugned termination letter is illegal simply urged that as per the Supreme Court decision Pigmy Agent being 'workman' the first party who was admittedly appointed as pigmy agent is entitled to Gratuity, PF and unpaid wages for certain period urged that first party having served about 12 years 15 days salary per year may be calculated as Gratuity and has to be paid to him.

7. Interalia the learned advocate appearing for the second party while drawing my attention to clause 14 of the memorandum of agreement between the first party and the second party dated 30-04-1987 urged that the agency of the first party being liable to be terminated by the bank without notice if the work or conduct found adverse to the interest of the bank since he failed to abide by the rules and conditions and also to remit the amount collected by him properly after serving notice and his admission of collecting the amount and failure to deposit the same his agency being terminated same is just and proper as such he is not entitle for any relief.

8. In All India Pigmy Agents Association's case the Central Govt. Tribunal Hyderabad held the commission payable to the pigmy agents has to be treated as wages and in the case of illegal retrenchment they are entitled for gratuity of 15 days, salary for each year of service.

9. In the instant case though lot of evidence has been placed on record by the second party regarding irregularities on the part of the first party in discharging his duties the learned advocate appearing for the first party who did not challenge such correspondence either in the cross examination of MW1 or in the rebuttal evidence led through the first party, he failed to demonstrate the termination is illegal. As urged on behalf of the second party as per clause 14 of the memorandum of agreement

between the first party and the second party dated 30-04-1987 produced at Ex.M1 his agency was liable to be terminated by the bank if his work or conduct is adverse to the interest of the bank and in the instant case several notices being issued for not obeying the conditions of the agreement, failure to remit the amount in time and also collecting a sum of Rs. 10,000 from Shri G.R. Yennennavar and failing to deposit the same, the second party taking into account all these facts having terminated his agency, his actions being adverse to the interest of the bank I find no reason to say that the said action of the bank terminating his agency as illegal or unjustified. The first party has not denied having given a letter to the bank dated 23-06-1998 under his signature marked at Ex.M11 wherein he has unequivocally admitted having collected amount from Shri Arjun G. Yadav & Shri Gadigeppa and undertaken to remit those amounts in monthly instalment of Rs. 300 from his commission amount. When the first party who was appointed to collect the pigmy deposit when he makes the customers of the bank to believe that he is the recovery official of the bank and even collected the loan amount of the customers and failed to remit such amount it is nothing but an act adverse to the interest of the bank which is a very serious misconduct on the part of the first party in dealing with the transactions of the banking institution. Under such circumstances the second party did not commit any error in invoking cluase 14 of the agreement and terminating his agency. Under the circumstances I find no reason to say the action of the second party in terminating the agency of first party was not being legal and justified. When the action of the second party is legal and justified the second portion of the reference i.e. if not what relief is the disputant workman entitled to does not survive at all. Since the pigmy agency of the first party has been terminated due to his failure to abide by the terms and conditions of the agency and acting against the interest of the bank by collecting the loan amount from the bank customers and failing to deposit the same his termination does not amounts to retrenchment making the bank liable to pay him gratuity as urged by his learned counsel. Under the circumstances I arrived at the conclusion the action of the management in terminating the services of the first party being legal and justified he is not entitled for any relief. In the result I pass the following award :

AWARD

The reference is rejected holding that the action of the management of Syndicate Bank in terminating the services of Shri Jakappa S/o Shri M. Pujari, Pigmy Agent w.e.f. 18-01-1999 is legal and justified and he is not entitle for any relief.

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3006.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बोर्ड ऑफ ट्रस्टी ऑफ दि पोर्ट ऑफ मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/74 ऑफ 2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 17-08-2012 को प्राप्त हुआ था।

[सं. एल-31025/7/2004-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 30th August, 2012

S.O. 3006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/74 of 2004) of the Central Government Indusutrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Board of Trustees of the Port of Mumbai and their workman, which was received by the Central Government on 17-08-2012.

[No. L-31025/7/2004-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT : JUSTICE G.S. SARRAF, Presiding Officer

Reference No. CGIT-1/74 of 2004

Parties: Employers in relation to the management of Board of Trustees of the port of Mumbai.

AND

Their workmen.

Appearances:

For the Management	:	Shri M.B. Anchan, Adv.
For the Union	:	Mrs. Pooja Kulkarni, Adv.
State	:	Maharashtra

Mumbai, dated the 17th day of July, 2012

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act.) The terms of reference given in the schedule are as follows:

> "Whether in view of the provisions of Agreement dated 13th December, 1991 and the settlement dated 25th January, 1994, made and entered into interalia between Government of India, Transport and Dock Worker's Union Bombay Dock Labour Board i.e. BBLB and MPPT i.e. Board of Trustees of Port of Mumbai, the concerned workers (of MBPT) viz., Shri Kalidas Itabari, Shri Anthony Kalia, Shri Vsant V. Gaikwad and Shri R.V. Walwalkar are entitled for the protection of their working hours i.e. 6 ½ hours per day as applicable during their erstwhile employment with BDLB and for necessary overtime wages for the work done by the said workers during their employment with MBPT beyond the said working hours."

2. According to the statement of claim filed by the Transport and Dock Worker's Union (hereinafter referred to as the Union) the workmen are in the employment of the MBPT and previously they were in the employment of Bombay Dock Labour Board (BDLB). The BDLB is absorbed in the MBPT w.e.f- 1-3-1994 and all the workmen and the employees who were in the service of BDLB are now in the service of the MBPT. As per clause (xvi) of the Settlement dtd. 25-1-1994 between the MBPT and the Union the employees of the BDLB were given option at the time of absorption to retain their working hours per day. The working hours of the workmen while in the employment of the BDLB were 6 ½ hours per day. The workmen exercised option and informed the MBPT in writing that they were not willing to change their working hours i.e. 6 ½ hours per day excluding lunch period of ½ hour. The workmen during their employment with the BDLB were also entitled to holidays on every second and fourth Saturday of each month in addition to 20 bank holidays and two optional holidays every year. The workmen were paid overtime at 1½ time of wages for duty performed beyond 6 ½ hours per day and for duty performed on 2nd and 4th Saturday of any month and/or any other holidays. In view of the aforesaid option granted by the MBPT it was incumbent and mandatory upon the MBPT to protect the aforesaid service conditions of the workmen as were prevalent during their employment with BDLB. As a matter of fact, the MBPT paid overtime to the workmen for the period beyond 6 ½ hours per day and further 8 hours at minimum wages rate i.e. double the normal wages in accordance with the aforesaid Settlement till 30-6-1994 and thus it is evident that the service conditions as prevalent during their employment with BDLB became service conditions during the employment of the MBPT also rendering any change in the service conditions without following due process of law malafide and illegal. However, from 1-7-1994 the MBPT arbitrarily and unilaterally without following due process of law and in gross violation of principles of natural justice discontinued paying overtime for the duty performed beyond 6 ½ hours. Similarly the workmen were also declared to be not entitled to holidays on 2nd and 4th Saturday of every month and the MBPT refused to pay overtime to the workmen even if they were required to perform duties on the above days. The MBPT further reduced the aforesaid 20 holidays to 13 holidays and refused to pay overtime wages to the workman inspite of forcing them to work on these additional days. If any workmen refused to perform duties for 8 hours instead of 6 ½ hours without payment of overtime the MBPT deducted wages of the workmen on prorata basis. According to the statement of claim the workmen preferred applications nos. 8 to 11 of 1995 under Section 33-C(2) of the Act before the CGIT-2, Mumbai. The Court by judgement and order dtd. 23-8-1996 held that the workmen were entitled to overtime as claimed by them. By another judgement and order dtd. 1-10-1996 the management was directed to make payment. Aggrieved by the said judgements, the management preferred writ petition no. 2306 of 1996 and by judgement dtd. 28-11-1996 honourable Bombay High Court remanded the matter back to the CGIT-2, Mumbai. By judgement dtd. 28-11-1197 the CGIT-2, Mumbai held that the applications were not maintainable under Section 33-C(2) of the Act. Aggrieved by the said judgement the Union preferred writ petition no. 546 of 1998 before the Bombay High Court. By judgement and order dt. 13-4-1998 learned single Judge dismissed the writ petition. The Union preferred Appeal no. 660 of 1998 before the Division Bench of the Bombay High Court which was disposed of on 28-6-2004 in terms of the minutes tendered by learned counsels for the rival parties and the Government of India was directed to make reference under Section 10(2) of the Act. Accordingly the dispute has come to be referred to this Tribunal. According to the Statement of claim the workmen are entitled to the protection of their previous service conditions as were prevalent when they were in the service of the BDLB and they are further entitled to overtime wages for the additional duties performed by them each day and for duty performed on 2nd and 4th Saturday of each month as also for duty performed on other holidays.

3. According to the written statement filed by the MBPT the workmen of the BDLB were absorbed by the MBPT w.e.f. 1-3-1994 in conformity with the Agreement dtd. 13-12-1991 and Memorandum of Settlement dtd. 25-1-1994 and the workmen accepted the service conditions of the MBPT. The MBPT has denied that clause (xvi) or any other provisions of the Settlement gives any option to the

workmen to work for 6 ½ hours per day and to avail holidays on 2nd and 4th Saturday of every month and two optional holidays every year. Under the Settlement the workmen are not entitled to seek working hours different from that prevalent working hours in the MBPT. It has been stated in the written Statement that the concerned department erroneously calculated the working hours of the workmen on the basis of 6 ½ hours per day till 1-7-1994 without considering clause (xvi) of the Settlement and after considering the above clause the error has been corrected. The MBPT has prayed that the reference be rejected.

4. The Union has mainly relied on Agreement dtd. 13-12-1991 and Settlement dtd. 25-1-1994 and it has not led any oral evidence. The MBPT has filed affidavit of Prashant P. Shah who has been cross-examined by learned counsel for the workmen.

5. Heard rival submissions.

6. It is nobody's case that the Settlement dtd. 25-1-1994 has been terminated. Admittedly the parties are bound by the Settlement. Clause (xvi) of the Settlement runs as under:—

> Such of the staff of the BDLB including its administrative bodies who are working on 6 ½ hours shift presently, will be given an option for absorption in similar sections in BPT provided on such absorption their conditions of work including the working hours will be those prevalent in BPT for its existing employees. Such of the staff who do not exercise the option to be so absorbed as above will be offered re-deployment anywhere in BPT without restrictions and without change in the working hours keeping in minds similarity of work provided that the discretion of redeployment shall be entirely that of BPT.

It is not the case of the MBPT that the workmen gave options for absorption agreeing with the conditions that their work including the working hours would be that prevalent in the MBPT for the existing employees. On the other hand, the witness of the MBPT Prashant P. Shah, in his cross-examination, has stated

> "This is correct that Ex. W-4 is an option form. Ex. W-4 was received from the workmen and it was filed by MBPT in CGIT No. 2, Mumbai in the Application No. 8 and 9 of 1995. Ex. W-4 relates to one Mr. Gaikwad who is a party in this case also. Option forms of 3 other persons were misplaced. These 3 persons are party (parties) here and they are (were) parties in the case before CGIT-2, Mumbai also."

Option form of the workman Gaikwad is enclosed with Ex-W-4 and the workman has given his option as under:

> "My present working hours are 6 ½ hours per day/ shift. I am not willing to accept the change in my working hours. I may, therefore, be allowed to follow 6 ½ hours per day/shift system. I am prepared to work in any office/department of the BPT for such 6 ½ hours/shift system."

7. It is thus clear that the workmen has not given any option accepting the conditions of work including the working hours as prevalent in the MBPT for the existing employees but, on the other hand, as is clear from the option given by the workman Gaikwad, they have opted to follow 6½ working hours per day system.

8. In view of the above discussion I have come to the conclusion that on the basis of clause (xvi) of the Settlement the workmen are entitled for the protection of their working hours i.e. 6½ working hours per day as applicable during their erstwhile employment with the BDLB and for necessary overtime wages for the work done by the workmen during their employment with the MBPT beyond the said working hours.

9. The reference is answered in favour of the workmen as above.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3007.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या सीजीआईटीए/100/2005) को प्रकाशित करती है । जो केन्द्रीय सरकार को 21-08-2012 को प्राप्त हुआ था।

[सं. एल-12012/93/2005-आई आर (बी. II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 30th August, 2012

S.O. 3007.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. CGITA/100/2005) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 21-08-2012.

[No. L-12012/93/2005-IR(B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,

Presiding Officer,

CGIT-cum-Labour Court,

Ahmedabad, Dated 19-06-2012

Reference: CGITA of 100/2005

The Assistant General Manager,

Bank of Baroda,

Regional Officer, Suraj Plaza-III,

Sayajiganj-Maganwadi,

Baroda-390005. .....First Party

And their workman

Shri B.P. Rohit, 90, Anandnagar,

Nr. Water Tank, Karelibaug,

Baroda. .....Second Party

For the first party: Shri K.V. Gandhia, Advocate

For the second party: None

AWARD

As per order No. L-12012/93/2005-IR (B-II) dated New Delhi 19-10-2005 the Appropriate Government/ Government of India, Ministry of Labour under clause (d) of sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 referred the dispute for adjudication to this tribunal by formulating the terms of reference as follows:—

SCHEDULE

"Whether the action of the management of Bank of Baroda through Assistant General Manager, Bank of Baroda, Vadodara in terminating the services of Shri B.P. Rohit, Ex-Clerk by way of 'Dismisal from service without notice with immediate effect' vide order dated 26-02-2004, is legal, proper and just? If not, to what relief the concerned workman is entitled to?"

(2) On receiving the reference order, it was registered and the notices were sent to the parties-both the management of Bank of Baroda and the workman. The second party workman did not appear in spite of notice to file statement of claim. However the first party appeared through lawyer, filed Vakalatnama to make contest in this reference case. However the dates were adjourned giving chances to the Second party for appearance and filling of statement of claim. Subsequently the case record was transferred to the state Industrial Court in the month of November, 2007 since the post of the Presiding Officer, CGIT-cum-Labour Court was vacant. On receiving of the records in the State Industrial Court again notice were issued. But in spite of that the second party workman failed to appear and file the statement of claim. On behalf of the first party a pursis was filed at Ext. 7 praying for closing the right of the second party workman to file statment of claim and for passing necessary order. However several reminders were issued to the second party workman for appearance and filing statement of claim but all in vain. Subsequently the case record again received back in this CGIT in the month of November, 2010. Again fresh notice was issued to the partied and in that course two notices dated 07-02-2011 and 11-02-2011 were issued in spite of that the second party failed to appear. On the other hand the first party through its lawyer was making attendance in this case.

(3) Case was called out on the dates and lastly it was called out on 17-04-2012 when the first party appear through lawyer and second party failed to make appearance. It was prayed on behalf of the first party for passing necessary order in this reference case.

(4) It appears that though the second party raised Industrial Dispute against his dismissal from service of Bank of Baroda vide order dated 26-02-2004 before the Conciliation Officer. However Conciliation Officer sent failure report to the Appropriate Government resulting in sending the reference order for adjudication. But now there is reason to believe that the second party workman has lost interest in this case and so in spite of several notices he failed to appear. In the circumstances the following orders is passed.

ORDER

This reference is dismissed for non-prosecution.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 33/2011-12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल-12011/57/2011-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3008.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 33/2011-12) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 30-08-2012.

[No. L-12011/57/2011-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/33/2011-12

Party No. 1: The General Manager,
State Bank of India,
Personnel Management Deptt.,
16th floor, Corporate Centre,
Madame Cama Road, Post Box No. 12, Mumbai-21.

The Asstt. General Manager,
State Bank of India,
Administrative Office, S.V. Patel Marg, Kingsway, Nagpur-1.

V/s

Party No. 2: The Dy. General Secretary,
State Bank Karmachari Sena,
C/o. State Bank of India,
Main branch, Station Road,
Nagpur.

AWARD

(Dated: 7th August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of State Bank of India and their union, for adjudication, as per letter No. L-12011/57/2011-IR (B-I) dated 07.12.2011, for adjudication with the following schedule:-

> "Whether the action of the management of State Bank in introducing the new scheme of payment of Ex-gratia Lumpsum amount in lieu of appointment on compassionate grounds, is legal and justified? Whether the demand of the union for appointment of Smt. Sobha Jagdish Sahare w/o. Late Jagdish Haridasji Sahare who died while in service on 08-05-2009, is legal and justified? To what reliefs Smt. Sobha Jagdish Sahare, the legal heir of the deceased workman, is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to the notice the management of State Bank of India ("the party no. 1" in short) appeared on 01-05-2012 through their advocate. However, inspite of sufficient service of notice on the union representative as mentioned in the letter of reference, neither the union representative nor anybody else appeared on behalf of the party no. 2 on 05-03-2012, to which date the reference was posted for filing of statement of claim. In the interest of justice, the case was adjourned to 01-05-2012, 26-06-2012 and 07-08-2012 for filing of statement of claim on behalf of party no- 2. As inspite of giving sufficient opportunities, the statement of claim was not filed by the party no. 2, by order dated 07-08-2012, the case was closed and was posted for orders.

3. It is well settled that when a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is to prove the illegality of the order and it is imperative for the party to file statement of claim before the Industrial Court setting out grounds on which the order is challenged and the party must also produces evidence to prove his case. If the party fails to appear or file statement of claim or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the said party would not be entitled to any relief.

As in this case, the party no. 2 has not filed any statement of claim setting out the grounds on which the order of the party no. 1 regarding introduction of new scheme of payment of Ex-gratia Lumpsum amount in lieu of appointment on compassionate grounds is challenged, the reference cannot be answered in favour of party no. 2. Hence, it is ordered:-

ORDER

The reference is answered in negative. The demand of the union for appointment of Smt. Sobha Jagdish Sahare w/o. Late Jagdish Haridasji Sahare who died while in service on 08.05.2009, is illegal and unjustified. Smt Sobha Jagdish Sahare, the legal heir of the deceased workman, is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3009.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टैण्डर्ड चार्टर्ड बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 29/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल-12011/24/2005-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3009.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as

shown in the Annexure, in the Industrial dispute between the management of Standard Chartered Bank of India and their workmen, received by the Central Government on 30-08-2012.

[No. L-12011/24/2005-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

NO. 2, MUMBAI

Present: K. B . KATAKE, Presiding Officer

Reference No. CGIT-2/29 of 2006

Employers in Relation to the Management of Standard Chartered Bank

The General Manager (HR)

Standard Chartered Bank

23-25, M.G. Road Fort

Mumbai 400 001.

AND

Their Workmen

The General Secretary

Grindlays Bank Employees Union 90, M.G. Road

Fort Mumbai-400 001

APPEARANCES:

For the Employer : Mr. Ashok Shetty, Advocate.

For the Workmen : Mr. L.A. Sawant, Advocate.

Mumbai, dated the 29th June, 2012.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12011/24/2005-IR (B-I), dated 29-05-2006 & Corrigendum dated 21/12/2006 & 11-09-2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of Standard Chartered Bank, Mumbai by not increasing the pension to Shri B.J. Fernandes and 15 others retrospectively with effect from their date of retirement and not increasing the ceiling in pension and increase in the pension of pensioners is justified? If not, what relief the workmen or Grindlays Bank Employees Union is entitled to?"

2. After receipt of the reference from the Ministry of Labour & Employment, both the parties were served with the notices. They appeared through their representatives. Second party Union has filed its statement of claim at Ex-8. According to the second party first party Bank is a foreign Bank having its registered office in UK. Currently there are about 380 permanent workmen, out of which 230 are in Mumbai. The 16 workers who have retired during the period 01-06-1999 to 01-03-2008 are being paid less pension compared with the other workmen who retired from the service of Bank on the sole ground that these 16 workers were not party to the private agreement dated 10-04-1999 signed by the Bank with another Trade Union. The employer Bank has not increased the pension and ceiling limit thereof in respect of these 16 workmen. Bank has also denied them the benefit of ad-hoc payment paid uniformly to the pensioners during the period 01-12-1997 to 31-03-1999. The ceiling on monthly pension for clerical workmen and for sub-staff was not increased as per the award of arbitrator Shri H G. Bhave. The first and second ad-hoc increase in pension was also not given to the clerks and sub-staff when they have given the increase in pension and ad-hoc payment to all other retired pensioners. They have discriminated these 16 workmen. Their demands are (i) the ceiling on pension to be raised to Rs. 12,000 for clerks and Rs. 7,000 for sub staff w.e.f. 01-01-2001. (ii) The minimum pension of Rs. 1,250 to be raised to Rs. 4,000 for clerks and Rs. 3,000 for sub-staff. (iii) The retirees from 01-01-1998 to be paid 50% increase in pension w.e.f. 01-01-2000 and retirees prior to 01-01-1998 be paid 80% increase in pension w.e.f. 01-01-2000. (iv) Widow/Family Pension be paid increased pension @ 50% of the pension sanctioned on the death of the pensioner with minimum Rs. 2,000 per month w.e.f. 01-01-2000.

3. A.L.C. (C) Mumbai made an attempt of conciliation. However, Bank management did not attend the proceeding. Therefore, he submitted the failure report to Govt. of India. On his report the Labour Ministry sent the Reference to this Tribunal. The second party prays that pension of B.J. Fernandes, M. S. Purushothaman, P.A. Shanbhag, E.J. Rodriques, G. F. Lewis, S.D. Wadkar, N.D. Bhise, T.R. Vaidyanathan be increased to Rs. 7000 p.m. and S.R. Phatarpekar be increased to Rs. 9,000 per month w.e.f. the date of their respective retirement. They also pray for increase in pension to R.D.Thakore and N.K. Nalawade @ Rs. 3,500 per month from the date of their respective retirement and also pray to increase in pension to all 16 pensioners at par with the other pensioners. They also pray to increase the ceiling limit on pension to Rs. 12,000 for clerks and Rs. 7,000 for sub staff w.e.f. 01-01-2001 They also pray for minimum pension for clerks be increased to Rs. 4,000 per month and for sub staff Rs. 3,000 per month w.e.f. 1-1-2001. They also pray for 50% increase in pension to the retirees from 1-1-1998 and also pray for 80% increase from 1-1-2000 to the retirees who retired prior to January, 1998. They also pray to increase family pension to Rs.2,000 per month effective from 1-1-2000 and the same amount be fixed as minimum pension. They also pray for increase in pension against increase cost of living at least once each

year effective from April at 50% of the rate applicable to Pensioners of Public Sector Banks. They also pray for costs.

4. The first party bank resisted the statement of claim vide its written statement at Ex.10. According to them the pensioners under Reference are already retired from the service, as such they are not workman as defined u/s. 2(s) of I.D. Act, 1947. Therefore, they are not entitled to raise any industrial dispute under the Act. There is no cause of action to raise such a dispute. The settlement between the bank and the majority union is not binding on the second party pensioner as they themselves had opted while they were in service not to be bound by the said settlement. The second party pensioners are not stopped from claiming any benefit under the said settlement and for raising any industrial dispute for seeking enhancement of the pension amount payable to each of them. The Reference is barred by principle of res judicata or principles analogous to res judicata as issue was raised in earlier proceeding before Bombay High Court and thereafter before Apex Court wherein Apex Court has upheld the contention of the management that, benefit of this settlement would not be applicable to those who were not parties to the settlement between the Bank and the majority union. There is no employer-employee relationship between them as the second party workmen are already retired from service. The union has no locus standi to represent these pensioners as they are not members of the union. The union has neither produced copy of constitution nor produced documents to show that any resolution of managing committee of union was passed authorizing the union or its General Secretary to raise the above referred demand. The Reference is vague and do not constitute an industrial dispute as names of individual pensioners are not mentioned. The Grindlays Bank is merged with Standard Chartered Bank, therefore, union has no concern with it. The first party denied all the contents in the statement of claim and prays that the Reference be dismissed with costs.

5. The second party vide its Rejoinder at Ex.11 denied the averments categorically in the W.S. and reiterated the contents in their statement of claim Following are the issues for my determination. I record my findings thereon for reasons to follow :

S.	Issues	Findings
1.	Whether employees involved in the reference who are retired, still comes in the definition of workmen as defined under Section 2 (s) of I.D. Act ?	Yes.
2.	Whether union can represent such retired employees and can raise dispute ?	Yes.
3.	Whether employees involved in the reference can get relief as sought ?	Yes.
4.	What order?	As per final order.

REASONS

Issue No. 1

6. In this respect it is the case of the first party that, the second party i.e. all the 16 persons are retired pensioners. Therefore they are not workmen as defined under Section 2 (s) of I.D.Act. It is further contended that, as they are retired workmen, the union cannot represent them as they ceased to be the members of the union. In this respect the Ld. adv. for the second party submitted that pension is the service condition. Therefore, though these workmen are retired workmen, they can very well raise the industrial dispute. He further submitted that the union is well entitled to represent them in the dispute. In support of his argument, the Ld. adv. for the second party resorted to the Bombay High Court ruling in ICI India Ltd. V/s. Presiding Officer & Ors. reported in 1993 II LLJ 568 wherein in para 24 of the judgment, the Hon'ble Court on the point observed that;

> "A person in respect of whom contract of employment has ceased to exist is a workman with in the meaning of Section 2 (s) of the I.D. Act."

In the same judgment in para 21 the Hon'ble Court further observed that;

> "Pension can be the subject matter of an industrial dispute."

7. In the light of the ratio laid down by Hon'ble High Court it is clear that, even the retired workmen are covered by the definition of 'workman' as defined under Section 2 (s) of the I.D. Act. Accordingly, I decide this issue no. 1 in the affirmative.

Issue no. 2:—

8. In respect of the issue no.2, when the workmen under reference comes in the definition of 'workman' as defined under Section 2(s) of the I.D. Act, they can very well be represented by the union though they are retired. On this point the Ld. adv. for the second party resorted to Kerala High Court ruling in Bharat Sanchar Nigam Ltd. V/s. Industrial Tribunal & Ors. 2008 III CLR 141 wherein the Hon'ble Court on the point observed that;

> ".....There is nothing in the industrial Disputes Act which requires that a dispute to be an industrial dispute should be raised by a recognized union or a majority union. It would suffice if there is a controversy between employer on the one side and the workmen on the other."

In para 4 of the judgment the Hon'ble Court further observed that;

> "It is not even necessary that a registered body should raise the dispute. Once it is shown that a body of workmen either acting through their union

or otherwise had sponsored the dispute, it becomes an industrial dispute."

9. The Ld. adv. also referred to Calcutta High Court ruling in Eastern Coalfield Ltd. V/s. Niranjan Chaterjee and Others 2008 III LLJ 439 (Cal) wherein the Hon'ble Court on the point observed that;

"...Though a retired employee could not raise an industrial dispute, it would be open for the trade union to raise the dispute under reference and the workmen could espouse the cause of the person who at one point of time had been workman and only ceased to be so on retirement."

10. On this point Ld. adv. for the second party also resorted to the Apex Court ruling in Newspapers Ltd. Allahabad V/s. State Industrial Tribunal, UP and Others reported in 1960 II LLJ 37 wherein the Hon'ble Court on the point of raising the industrial dispute observed that;

"It is not necessary that a registered body should sponsor a workman's case to make it an industrial dispute. Once it is shown that a body of workmen either acting though their union or otherwise had sponsored a workman's case, it becomes an industrial dispute."

11. In the light of the above observations it is clear that, though the workmen herein are retired persons, the union of which they were earlier members when they were in service, can very well raise the industrial dispute. Accordingly. I decide this issue no. 2 in the affirmative.

Issue no. 3:—

12. In this respect the Ld. adv. for the first party at the outset submitted that the reference herein is defective and not maintainable. According to him, the Government has sent this reference as to whether the action of the management of Standard Chartered Bank in not increasing the pension of Mr. V. J. Fernandes and 15 others retrospectively w.e.f. the date of their retirement and not increasing the ceiling in pension is justified? If not what relief the union is entitled to? According to the first party, such a reference is out of jurisdiction of the Tribunal. According to them, though action of the Bank is held not justified, the Tribunal cannot give direction to increase the pension or to increase the ceiling on the pension limit. According to them, by giving any such direction by the Tribunal would be beyond the scope of the reference and it would be beyond the jurisdiction of the Tribunal. In support of his argument Ld. adv. resorted to Apex court ruling in ANZ Grindlays Bank Ltd. V/s. Union and India & Ors. AIR 2006 SC 296. In that case the reference in short was "Whether action of Bank withholding the benefit of the settlement to the workmen who are not members of the association until the individual gives acceptance of the settlement in the given format is legal and justified? If not, to what relief is the workmen entitled to?" In that case the Bank had challenged the order of reference passed by Labour Ministry in writ petition before High Court, contending that there is no industrial dispute and the reference deserves to be quashed. In that case Hon'ble Court in para 15 of the judgment observed that;

"...It is manifestly clear that there is no industrial dispute in existence nor there is any apprehended dispute between the appellant Bank and the Federation (second respondent) and as such there is absolutely no occasion for making any reference for adjudication by the Industrial Tribunal. The reference being wholly futile, the same deserves to be quashed."

In the same judgment Hon'ble Court in respect of obtaining signature on the proforma receipts of the employees who were not members of the union who had signed the settlement observed that;

"To protect its interest, the Bank was perfectly justified in asking for a receipt from those employees who were not members of the Association (Third respondent) but wanted to avail the benefit of the settlement. Therefore we do not find any thing wrong in the Bank asking for a receipt from the aforesaid category of employees."

13. In this respect the Ld. adv. for the second party submitted that, in the case at hand the reference is not in respect of justification of action of Bank in obtaining signature on format receipts as in the aforesaid case. On the other hand he pointed out that, the workmen herein are claiming the increase in pension and increase in ceiling therein at par with the employees of the union who has signed the Settlement. The Bank has refused their request and it is an industrial dispute. Whatever the language used by the Ministry while sending the reference, the ultimate aim and purpose of the reference needs to be taken into account. According to him, the reference has to be adjudicated to meet the ends of justice and the Tribunal need not observe mere technicalities in the words used by the Ministry. In the circumstances I hold that what words are used while sending the reference are immaterial. The main question for adjudication is whether the retired employees under reference are entitled to the pension benefit as like the other employees who were the members of majority union. The facts in the above referred case are quite different wherein justification of the action of Bank in obtaining receipt in a particular format was sought to be decided which was in fact not an industrial dispute. However in the case at hand the point of increase in pension of retired workmen under reference is in dispute which is an industrial dispute. Therefore the ratio laid down in the above referred case is not attracted to the set of facts of the case at hand. Furthermore, instead of going into the technicalities, to meet the ends of justice the reference has to be interpreted to its proper perspective. Therefore I hold

that, some defect in making reference need not be given undue importance when the dispute is clear. It would be waste of time and energy to seek for another corrigendum from the Ministry. In short, point involved herein is whether the retired employees under reference are entitled to the pension at par with the other employees who were members of majority union. It does not amount to exceed the jurisdiction by this Tribunal. Tribunal is very well empowered to decide such an issue in this reference and can interpret the same to its proper perspective.

14. In this respect the Ld. adv. for the second party rightly further submitted that, the first party has not challenged the order of reference passed by the Ministry by filing writ as in the above referred case. On the other hand the first party has submitted itself to the jurisdiction of this Tribunal. Now they are estopped from challenging the order of reference before this Tribunal. In this back drop I hold that the objection raised by the first party in this respect is devoid of merit.

15. The first party has also submitted that, the issue involved in this reference was already decided by Hon'ble Apex Court in ANZ Grindlays Bank Ltd. (referred supra). In that case the Hon'ble Court held that Bank was justified in insisting for signing the receipt in the prescribed format to avail the benefits of the said MoS. Therefore it is submitted that the principle of res-judicata would come in the way while determining the issue in this reference.

16. In respect of the principle of res judicata, the Ld. adv. for the second party rightly submitted that in the said judgment of Grindlays Bank of 2006 the issue was whether the action of Bank was justified in insisting the employees to sign a receipt in a prescribed format if they wanted to receive the benefit of the said settlement. The Apex Court in that case held that, Bank was justified in insisting for the receipt in the prescribed format to avail of the benefits of the said MoS. In the case at hand no such issue is before this Tribunal in respect of signing receipts in particular format. On the other hand the Tribunal also can direct these retired persons to sign the receipts as per the format prescribed by the Bank as the said action of the Bank is held justified. The point herein is whether these 16 pensioners are entitled to get the pension at enhanced rate as like other pensioners who were members of majority union. It is not the case of the first party that these pensioners have refused to sign the receipt in a particular format as in the above referred Apex Court ruling. Another point herein is whether the ceiling on pension limit has to be increased as like other pensioners. These issues were not involved in the above referred Apex Court ruling. Therefore bar of principle of res-judicata would not come in the way while deciding this reference as issues involved herein are totally different. On the other hand in the light of above Apex Court ruling I would like to point out that, the first party Bank ought to have increased the pension and ceiling thereon at par with the other employees by obtaining signature of these workmen in a prescribed proforma as has been held by the Apex Court legal and justified. In short the reference is not bad or hit by the principle of resjudicata.

17. The last objection raised on behalf of the first party is that, these 16 pensioners have not signed the MoS from time to time. Therefore they are not entitled to the benefits given under those settlements. According to the first party some part of the settlement was not acceptable to these pensioners. Therefore they have not signed the MoS. Now they cannot claim the benefit given under the said settlement. They cannot divide the settlements in pieces and accept some part and reject the rest. In support of his argument the Ld. adv. resorted to Apex Court ruling in Herbertsons Ltd. V/s. The workmen of Herbertsons Ltd. & Ors. 1977 LAB. I.C. 162 wherein para 27 of the judgment the Hon'ble Court observed that:

> "It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that objectionable portion is such that it completely outweigh all the other advantages gained, the court will be slow to hold a settlement as to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust."

18. In this respect the Ld. adv. for the second party submitted that there are no two opinions that settlement has to be accepted in toto. He further submitted that the settlement was signed by the employers sponsored union. He further submitted that though some clauses in the settlement were not acceptable to these employees, they cannot be discriminated on that count. In this respect the Ld. adv. for the first party submitted that as the workmen under reference were not parties to the settlement and the settlement was not arrived at during the conciliation proceeding, therefore, the settlement and terms and conditions therein are not applicable to these workmen and they cannot claim the benefit of pension increase and increase of ceiling on pension as per the settlement signed by the majority union.

19. In this respect the Ld. adv. for the first party resorted to some rulings. However fact is not disputed that the private settlements are not binding on the employees who are not the members of the union who have signed the settlement as settlement is not during the process of conciliation. Therefore it is not necessary to refer the rulings on this point. In this respect the Ld. adv. for the second party submitted that under the garb of settlement the company cannot discriminate the two groups of employees. In this respect, Ld. adv. for the first party submitted that different standard applied in respect of pension of two groups does not amount to discrimination. In support of his argument, Ld. adv. resorted to the judgment of Hon'ble Apex Court in ITC Ltd. Workers Welfare

Association V/s. The Management of ITC Ltd. & Ors. decided on 29-1-2002 in Special Leave Petition (Civil) 15178 of 1999 wherein Life Pension Scheme Benefit was given to the employees who retired on or after 24-08-1986 and it was denied who retired there-prior. In that case Hon'ble High Court held that fixation of cut off date for the purpose of entitlement of life pension cannot be said to be arbitrary or irrational as such fixation becomes imperative from financial point of view and moreover the date coincided with Platinum Jubilee Celebration of the company. The date was not 'picked up from the hat. The Hon'ble High Court upheld the decision of the Industrial Court which was maintained by Hon'ble Apex Court by observing that:

> "Strictly speaking such approach is not apt and appropriate. The present case is one where Article 14 cannot be applied as respondent is not 'State' or 'other Authority'. On this there is practically no dispute."

However the principle laid down in this case is not attracted as it is in respect of two groups of pensioners, one retired before a particular date and the other given life pension who retired on or after that date.

20. In this respect Ld. adv. for the second party submitted that two groups of employees retired simultaneously and there is vast difference in the pension. It amounts to violation of Article 14. In support of his argument, the Ld. adv. for the second party resorted to the full bench judgment of Hon'ble Apex Court in D.S. Nakara & Ors. V/s. Union of India in Writ Petition no. 5939 to 5941 of 1980 decided on 17-12-1982 wherein the Hon'ble Court on the point observed that :

> "There is no justification for arbitrarily selecting the criteria for eligibility for the benefit of the new scheme dividing the pensioners all of whom would be retired but falling on one or the other side of specified date. If pensioners form a class, their competition cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. The division of pensioners into two classes is not based on any rational principle and if the rational principle is the one dividing pensioners with a view for giving something more to the pensioners otherwise equally placed, it would be discriminatory."

21. In this respect the Ld. adv. for the first party submitted that these pensioners have not signed this settlement. Therefore, they are not entitled to get the pension at the increased rate or to get the ceiling lifted. In this respect the Ld. adv. for the second party submitted that not only in the same company, but workmen of same category in different companies are entitled to pension at the equal rate. In support of his argument Ld. adv. resorted to Apex Court ruling in Bharat Petroleum Management Staff Pensioners V/s. Bharat Petroleum Corporation Ltd. AIR 1988 SC 1407 wherein the Hon'ble Court observed that:

> "....The petitioners would be entitled to a hike in the pension admissible at the same rate as was being given by Hindustan Petroleum Corporation. Judicial notice could be taken of the fact of loss of purchasing power of rupee to a considerable extent. Accordingly the respondent company was directed to give the necessary hike in the pension effective from 1-5-1988."

22. The Ld. adv. for the second party also referred to another Apex Court ruling in All India Reserve Bank Retired Officers Association & Ors. V/s. Union of India & Ors. wherein the Hon'ble Court on the point observed that;

> "The differential treatment accorded to those who retired prior to specified date and those who retired subsequent thereto must be justified on the touch stone of Article 14 for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution."

23. In this respect the Ld. adv. for the first party submitted that as these pensioners have not signed the settlement, they are not entitled to the pension at the enhanced rate and ceiling on the pension also cannot be lifted. In this respect I would like to refer the judgment of ANZ Grindlays Bank Ltd. referred supra wherein Hon'ble Court allowed the Bank management to get proforma receipts signed from the workmen who were not parties to the settlement. The same principle can be attracted in respect of these pensioners. The management can get proforma receipts executed from these pensioners and should release the pension at the enhanced rate. In the circumstances, I come to the conclusion that, instead of getting proforma receipts executed the Bank has refused to increase the pension and ceiling limit thereon. In this backdrop I come to the conclusion that, said action of the management refusing the demand of these pensioners is not justifiable. Not giving equal pension to them amounts to discrimination Consequently I hold that the pensioners herein are entitled to get pension equal to the other employees of the union who had signed the settlement (By signing the proforma receipts). Accordingly I allow the reference and proceed to pass the following order:

ORDER

The reference is allowed with no order as to cost.

The action of the management not increasing the pension of Shri B.J. Fernandes & 15 ors is declared not justified. The workmen under reference are entitled to pension equal to the other employees of the majority union who have signed the settlement from the date of their respective retirement. The management is also directed to

increase the ceiling limit of these pensioners at par with the other pensioners. The management may obtain proforma receipts from these pensioners if required for.

Date: 29/06/2012

K. B. KATAKE, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3010.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 74/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/08/2012 को प्राप्त हुआ था।

[सं. एल-41012/75/2005-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3010.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 74/2005) of the Central Government Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the management of the Central Railway, and their workman, received by the Central Government on 30-08-2012.

[No. L-41012/75/2005-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/74/2006

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Somari Prasad, S/O Shri Jageshwar Prasad,
R/o Gram Dogargaon Rly. Station
Post Dogargaon,
Distt. Khandwa (MP) ... Workman

Versus

The Divisional Railway Manager,
Central Railway,
Bhusawal (Maharashtra). ... Management

AWARD

Passed on this 26th day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-41012/75/2005-IR(B-I) dated 17-11-2006 has referred the following dispute for adjudication by this tribunal:—

"Whether the action of the management of Divisional Railway Manager, Central Railway, Bhusawal (Maharashtra) in terminating the services of Shri Somari Prasad S/o Shri Jageshwar Prasad, Ex-Gangman. MRCL. 19-1-1987 is justified? If not, what relief the person concerned is entitled to?"

2. The case of the workman, in short, is that the workman Shri Somari Prasad was working as a monthly rated gangman under the management. After completion of two years, he was made monthly rated gangman and acquired the temporary status and medical certificate was issued by the management. He was initially engaged on casual basis on 22-2-79 as per his service card and was terminated arbitrarily w.e.f. 19-1-1987 in violation of the provision of labour law without payment of compensation. After attaining the temporary status, he was governed by Discipline and Appeal Rules 1968. He was terminated against the principles of natural justice. He made several representation but he was not taken on duty. He raised dispute before the Asstt. Labour Commissioner but on failure of conciliation, the failure report was sent to the Ministry. The Ministry rejected to refer the reference to the Tribunal on the ground of delay. A.W.P. No. 13339/2006(S) was filed by the workman before the Hon'ble High Court. The Hon'ble High Court was pleased to quash the of the Ministry. Thereafter the matter was referred for adjudication. The workman has also filed documents in support of the case. It is submitted that the workman be reinstated with back wages.

3. The management appeared in the reference case on 21-8-07 and were present till 22-10-2008 but inspite of several dates given to the management, the Written Statement was not filed. Lastly the management became absent and the reference was, therefore, proceeded exparte against the management on 16-9-09.

4. On the basis of the pleadings of the workman and the reference order, the following issues are settled for adjudication-

I. Whether the action of the management in terminating the services of Shri Somari Prasad w.e.f. 19-1-87 is justified?

II. Whether the dispute raised by the workman was at belated stage and it was sufficient to reject the claim of the workman?

III. To what relief, if any, the workman is entitled?

5. Issue No. I

The workman has adduced oral and documentary evidence in the case. The workman Shri Somari Prasad has supported the case in his evidence. He has stated that he worked regularly from 22-2-79 to 18-7-79, then from 24-12-79 to 18-6-80, then 24-4-81 to 19-10-83. He was medically tested and found fit on 8-9-83. Thereafter he got the status of permanent employee and worked from 1985

till the date of termination on 19-1-87 without payment of compensation. He was also given the facilities of railway pass to the workman and his family members. He made several representations but he was not taken in employment. His evidence is unrebutted. There is no reason to disbelieve his evidence. His evidence clearly shows that he was in continuous service from 1985 till 19-1-87 when his service was terminated. It is also clear that no retrenchment compensation was paid and therefore there was violation of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It also appears from his evidence that he acquired the permanent status and as such he was terminated without departmental enquiry under rules and is also a violation of the principles of natural justice.

6. In support of the case, the workman has also adduced documentary evidence. Exhibit A/1 is the typed copy of the service casual card. This is filed to show that he was engaged as casual labour on 22-2-79. Exhibit A/2 is the medical fitness certificate dated 8-9-93. This is filed to show that before granting temporary status he was medically examined and was found fit. Exhibit A/3 is the Railway pass dated 18-8-84. This pass appears to be issued in the name of the wife of the workman. It is filed to show that he was in the employment in the year 1984 of the management as such the Railway pass was issued. Exhibit A/4 is the application filed by the workman before Asstt. Labour Commissioner (C), Jabalpur whereby he raised the dispute. Exhibit A/5 is the failure report by the ALC(C), Jabalpur to the Ministry. Exhibit A/6 is the order of the Ministry whereby it was rejected to refer the dispute before the Tribunal on the ground of delay. Exhibit A/9 is the order dated 18-9-06 passed by the Hon'ble High Court in Writ Petition No. 13339/2006(s) whereby the Hon'ble Court set aside the order of the Ministry and directed to refer the matter for adjudication to the Tribunal. The oral and documentary evidence show that he was engaged by the management and subsequently from 1985 he was in continuous service till 19-1-1987. There is no other evidence in rebuttal to disbelieve the evidence of the workman. Thus it is clear that the workman was in continuous service for a period of one year during twelve calendar months preceding the date with reference as has been provided under Section 25B of the Act, 1947. It is also clear from the evidence that no notice was given nor any retrenchment compensation was paid and therefore there was violation of the provision of Section 25-F of the Act, 1947. It is clear that the management was not justified in terminating the services of the workman. This issue is decided in favour of the workman and against the management.

7. Issue No. II

Now the another point for consideration is as to whether there was delay in raising dispute and the said delay is sufficient to reject the claim. The evidence of the workman shows that he gave applications time to time to the authority who gave assurance for taking him in employment. Lastly he raised dispute and was the reason for delay. However on the basis of the above discussion, it is clear that he was terminated from the service in violation of the provision of Section 25-F of the Act, 1947 and the same is established by the evidence. The Hon'ble Apex Court in a case reported in (2007) 14 S.C.C. 291 held that the Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25-F of the I.D. Act, 1947. Thus it is clear that even if the explanation of delay is not proper, the reference cannot be rejected when it is established that there was violation of Section 25-F of the Act, 1947. This issue is decided in favour of the workman and against the management.

8. Issue No. III

On the basis of the discussion made above, it is clear that the management was not justified in terminating the service of the workman. Since there is no plea that he was not gainfully employed, as such the management is directed to reinstate the workman within two months from the date of award without back wages. Accordingly the reference is answered.

9. In the result, the award is passed with cost of Rs. 5000 (Rupees Five Thousand only) to be paid to the workman by the management.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3011.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेशवर के पंचाट (संदर्भ संख्या 31/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल-12012/20/2008-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3011.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the industrial dispute between the management of the State Bank of India and their workman, received by the Central Government on 30-08-2012.

[No. L-12012/20/2008-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 31/2008

Date of Passing Award—16th August, 2012

BETWEEN:

The Asst. General Manager,
State Bank of India, Bhubaneswar Main Branch,
Bhubaneswar Distt. Khurda, (Orissa),
Bhubaneswar (ORISSA).

1st Party-Management.

(AND)

Their workman Shri Panchanan Maharana,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar (ORISSA).

2nd Party-Workman.

APPEARANCES:

Shri Alok Das, Authorized Representative	...	For the 1st Party-Management.
None.	...	For the 2nd Party-Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/20/2008-IR(B-I), dated 02-06-2008 to this Tribunal for adjudication to the following effect:

> "Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar, in terminating the services of Shri Panchanan Maharana, w.e.f. 30-9-2004 is fair, legal and justified? To what relief is the workman concerned entitled?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger in June, 1990 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 21-02-2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 1 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank in June, 1990 and he was discontinued from service on 30-9-2004 is not correct. It is also not correct that he was signing bogus voucher. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons including the

2nd Party-workman were called for interview in the year 1993. As he did not succeed in the interview, he could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 Passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Moharana were discontinued much earlier to 30-9-2004 i.e. in June, 2004 his claim has become stale by raising the dispute after a long period. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for more than 240 days as enumerated under section 25-F of the Industrial Disputes Act ?

3. Whether the action of the Management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Shri Panchanan Moharana, with effect from 30-9-2004 without complying the provisions of the I.D. Act, 1947 is legal and justified.

4. To what relief is the workman concerned entitled ?

5. The 2nd Party-workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case.

"Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar is not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?"

8. The name of the 2nd party-workman appears at Sl. No. 1 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in June, 1990 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and

he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhaya Kumar Das in his statement before the court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies....He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch much prior to that." The 2nd Party workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. This he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Panchanan Maharana with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issue Nos. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का. आ. 3012.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.एस. प्रगति ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट (संदर्भ संख्या 87/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-08-2012 को प्राप्त हुआ था।

[संख्या एल-12012/46/2007-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2007) of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the management of M/s. Pragathi Grameena Bank and their workmen, received by the Central Government on 27-08-2012

[No. L-12012/46/2007-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 11th July, 2012

Present : SHRI S.N. NAVALGUND, Presiding Officer

C.R. No. 87/2007

I Party	II Party
Shri P.D. Honnurvalli B.Com,	The Chairman,
Ex. Employee, P.G. Bank	M/s. Pragathi Grameena Bank,
(No. 774),	H.O. Gandhi Nagar,
Behind Kotteswara ITI College,	Bellary.
12th Ward, Sirgupta (PO & Tq),	
Bellary District.	
Bellary	

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and Sub-section

2A (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide Order No. L-12012/46/2007(IR B-1) dated 03-07-2007 for adjudication on the following Schedule:

SCHEDULE

"Whether the action of the management of Chairman, M/s. Pragathi Grameena Bank H.O., Gandhi Nagar, Bellary in dismissing Shri P.D. Honnurvali, Ex-employee (Staff No. 774) from his services is legal and justified? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference pursuant to the notices issued by this court the first party workman as well as the management/second party entered their appearances through their respective advocates and filed their claim statement and counter statement respectively.

3. The brief facts leading to this reference and award may be stated as under :

Shri P.D. Hannurvali (hereinafter referred as first party workman) who joined as Clerk-cum-Cashier on 3-07-1984 at Pragathi Grameena Bank (hereinafter referred as Second Party) and was working at second party's Valaberry branch from 7-7-2003 was served with show cause notice by the head office of the second party on 15-03-2005 in respect of his allegedly abusing and assaulting Shri Shantah Veeraiah, the branch manager and the second party being not satisfied with his reply dated 23-03-2005 keeping him under suspension by order dated 15-03-2005 served charge sheet on him dated 31-03-2005 as under :

Charge Sheet

"Whereas, there are prime-facie grounds for believing that you have committed misconduct, the particulars of which are given below, this charge-sheet has been drawn up against you and you are required to submit to me within 7 days of receipt of this charge-sheet a statement in writing setting forth your defence, if any, and show cause as to why disciplinary action should not be taken against you and why appropriate punishment should not be imposed upon you.

You are working as Clerk-cum-cashier at Valabellary branch from 07-07-2003 (under suspension from 15-03-2005 during office hours). While so working there, on 14-03-2005 at about 12.00 noon, Smt. Kamalamma and Kum. Channamma the Representatives of Kittut Channamma SHG have reportedly visited the Valabellary branch to withdraw an amount of Rs. 11,500 from Sb A/c 3162 of Kittur Channamma SHG.

The balance outstanding in SB A/c 3162 of said SHG was Rs. 11,587. The members of said SHG has passed a resolution to withdraw Rs. 11,500 in their meeting held earier. At this time Sri Chandrashekar S/o Hanumappa R/o Valabellry coolie present in the branch reportedly informed the representatives to maintain minimum balance of Rs. 100 in SB A/c after withdrawing the amount of Rs. 11,500. At this juncture Manager Sri S. Shanthveeraiah (23) advised the representatives to write the cheque for Rs. 11,500 only since the said SHG had clearly passed a resolution to withdraw Rs. 11,500 and informed to remit Rs. 50 to SB A/c to maintain minimum balance of Rs. 100. At this stage you have directly ordered the representatives of said SHG in loud voice and stated in vernacular language that ನೂರು ರೂಪಾಯಿ ಬೆಲಾನ ಬರಿಯೋಡಿರಿ ಬೆಕ್ಕನ್ನೆ ನೂರು ರೂಪಾಯಿ ಕಡಿಮೆ ಮಾಡಿ ಬರಿರಿ".

To reduce the work load and to minimise the inconvenience to the customers Shri S. Shanthaveeraiah (23) Manager is reportedly suggested to the presentatives of SHG as under:

ನೀವು ಕಂಗಾವು ಪಾಸು ಮಾಡಿದಲ್ಲಿ ಹಣವನ್ನು ಪಡೆ ಮಾಡಿ ಎಂಟೆರ ದಿವಸಲ್ಲಿ ನೂರು ರೂಪಾಯಿ ತುಬಿರಿ ಮತ್ತೆ ಇನ್ನ ಮುಂಡೆ ಸೆಹಾ ನೂರು ರೂಪಾಯಿ ಶಿಲ್ಕ ಖಾತೆಯಲ್ಲಿ ಉಳಿಯುವ ಹಾಗೆ ಮೋಡಿರೆಂಬ್ಳಿ.

On hearing the Managers suggestion you reportedly started shouting and arguing with Sri Shanthaveeraiah, Manager infront of the customers and abused in singular words by using unparliamentary filthy language as under language as under without any provocation" " ಇವನ ಹೆಂಗ್ಳತ್ತಿನವ್ಲ ? ಇವನ ಕೆಲಸ ಮಾಡುವುದು ಇವನಿಂಗ್ಳು ಉಚ್ಚಿ ಹಡುಕ".

In response to the above remarks Sri S. Shanthaveeraiah (23) Manager has reportedly stated that" ನಾನೇನ ತಪ್ಪು ಮಾಡಿದ್ದೀನಿ ಕಾಮನ ಬೈಸ್ಕೊಕಾಗಿ ಇಲ್ಲಿ ಮತ್ತೆನಾಡಿಚಾಕಡೆ ?

and then he continued to write waste sheet. At this stage you reportedly rushed towards Sri. S. Shanthaveeraiah Managers table and assaulted him by slapping on this face strongly in front of customers in open premises. Due to your assault the spectacles of Sri. Shanthaveeraiah, Manager was fallen down and broken into pieces. Further, you have obstructed your official superior to discharge his duties in the branch.

That apart your previous records reveals that you have committed similar acts of misconduct for which you are cautioned/warned for several times. The details are enclosed in the annexure.

Thus, by your above said riotous acts and rude behaviour at the branch premises during office hours tarnished ther image of the Bank before customers in particular and public in general. Further, you have crossed the limits of decency and decorum while dealing with the officials superior placed over you. Your above acts caused obstruction to discharge the duties of your official superior and also normal functioning of the branch. Further, you uttered the filthy words and passed derogatory remarks which amounts of insubordination and misconduct in terms of Regulation No. 17 and 19 of Tungabhadra Gramin Bank (Officers & Employees) Service Regulations, 2000 under chapter-IV conduct, discipline and appeals and an office in

accordance with the relevant law in the country as applicable and committed acts of misconduct punishable under Regulation No. 38 of Tungabhadra Gramin Bank (Officers & Employees) Service Regulations. 2000" and initiated Domestic enquiry appointing Shri R.S. Thimmanagowda, as Enquiry Officer and Shri R. Ramanajaneyalu as Presenting Officer by order dated 2-04-2005. Then the enquiry officer securing the presence of the Presenting Officer first party who appeared along with his Defence Representative Shri H. Nagabhushan Rao after complying the formalities of preliminary hearing recorded the evidence of 7 witnesses for the management and as the first party and his defence representative submitted that they have no evidence to lead, after receiving the written briefs from the management representative as well Defence Representative the enquiry officer submitted his detailed enquiry findings dated 23-09-2005 the charge being proved. Then the Disciplinary Authority forwarding a copy of the enquiry finding to the first party through his letter dated 28-09-2005 given opportunity to make his submissions and on receipt of his submissions dated 10-10-2005 while accepting the findings of the enquiry officer issued a second show cause notice dated 22-02-2006 proposing the punishment of dismissal from services of the bank and affording him an opportunity of personal hearing by his order dated 31-03-2006 imposed the impunged punishment of dismissal. On appeal by the first party to the Board of Directors, the Board of Directors giving him an opportunity of hearing upheld the decision of the Disciplinary authority by order dated 29-09-2006. Then the first party approached the ALC(C), Dausa (Rajasthan) for conciliation and on failure of the conciliation proceedings the ministry made this reference for adjudication.

4. Though the first party in his claim statement did not make any allegation regarding the fairness on otherwise of the domestic enquiry as usual the following Preliminary Issue was raised—

> "Whether the domestic enquiry conducted against the first party by the second party being fair and proper?"

and after receiving the evidence of the enquiry officer and of the first party after hearing the arguments addressed by the learned advocates by order dated 21st April 2011 the domestic enquiry being held as fair and proper and thereafter the learned advocates appearing for the parties have filed their written arguments touching the merits, the points that now remains for my consideration are—

(i) Whether the finding of the enquiry officer is perverse?

(ii) If not, whether the punishment of dismissal imposed by the Diciplinary Authority upheld by the Appellate Authority is disproportionate to the proved misconduct of the first party?

(iii) What award?

5. On appreciation of the relevant pleadings to the parties with the evidence brought on record by the management in the Domestic Enquiry and the written arguments submitted by the learned advocates for both the sides my finding on point Nos. (i)&(ii) are in the 'negative' and Point No. (iii) as per final order for the following reasons:

Reasons:

6. In the claim statement as far as the charge levelled against him finding of the Enquiry Officer he had stated that he who joined the second party bank in the year 1983 worked in its 10 branches at rural areas satisfactorily and that on 07-07-2003 he was posted to Valaballary branch which is a branch consisting of 1+1 staff position and there was a heavy workload and the Manager of the Branch Shri S. Shanthaveeraiah belonging to the upper caste was not in good terms with him as he belongs to backward class and used to abuse him whenever he used to find fault with him and made a false complaint of abusing and assaulting him and on the basis of such false complaint he was charge sheeted and though it was demonstrated before the enquiry officer that MW1 was not present at the time of alleged incident, MW4 is the relative of the Manager, MW5 Chandrashekar is not at all employee of the Respondent Bank as on the alleged date of incident and the management failed to produce the alleged broken spectacle of the manager the enquiry officer held the charge as proved and same is not sustainable and the management imposing the punishment of dismissal on such report is also unsustainable. In the written arguments submitted by the learned advocate apppearing for the first party he has just reiterated what is appearing in the claim statement and has failed to demonstrate where/how it was brought out in the evidence lead by the management before the enquiry officer that MW1 was not present at the time of alleged incident, MW4 being relative of the Manager, MW5 was not at all employee of the Respondent Bank as on the date of alleged incident. On the other hand it is seen from the cross examination of MW1 to whom just two questions have been put to him by the defence representative i.e.—

(1) Does she know reading and Writing?

(2) Who has written her written statement marked as ME-1 and whether she knows the content of the same?

Though she has categorically identified the CSE/first party as the cashier of the bank and stated that there was a quarrel between the manager and the Cashier and the Cashier slapped the manager with his left hand and the spectacles of the manager fell down the same has not been challenged or even denied by way of suggestion. MW1 who is undisputedly a lady customer of the bank has no motive to falsely implicate the first party for allegedly quarreling with the manager and slapping him. MW2 is the scribe of Ex. ME-1, the statement of MW1 he has confirmed the same and nothing has been elicited in his cross examination to disbelieve his evidence. MW3 who is another customer of the bank though categorically deposed that when she has visited the branch for withdrawing an amount from her account the manager asked her to remit Rs. 100 back and the CSE/first party asked to draw less amount and in that regard there was an argument between the manager and the CSE/first party and then the CSE/first party got up and slapped the manager, nothing has been elicited in her cross examination to disbelieve the same or even a suggestion has been made denying her evidence. MW4, Channamma another customer of the bank also though categorically stated regarding the exchange of words that had allegedly taken place between the first party and the branch manager in detail and the first party having slapped on the cheek of the branch manager as a result of which his spectacle fell down and broken, nothing has been elicited in her cross examination to disbelieve the same nor a suggestion is made denying her evidence. MW5, Chandrashekhar a Coolie claims to be present at the time of alleged incident though categorically stated that on 14-03-2005 at about 12 PM when SHG members had come to the bank for withdrawal of amount exchange of words took place between the first party and the manager and the first party abused and slapped the manager on the cheek, nothing has been elicited in his cross examination no even denied his evidence by way of suggestion or elicited that he happens to be the relative of the Branch Manager. MW6, Shri S. Shantaveeraiah, the victim of the alleged incident has categorically deposed about the incident and he being abused and slapped on the cheek by the first party in details and nothing has been elicited in his cross examination to descredit the same. MW7 Shri M. Hanumanthaiah is a bank official who was entrusted with investigation of the incident before the first party was charge sheeted and he has deposed to the same and nothing has been elicited in his cross examination. Thus MW1 to MW6 have though categorically deposed on the date of alleged incident after exchange of words between the first party and the branch manager the first party did slapped the branch manager on his cheek nothing being elicited in their cross examination to discredit their version, absolutely I find no reason to say the finding of the enquriy officer either being baseless or perverse. Thus I have arrived at the conclusion there is no reason to say the finding of the enquiry officer being perverse.

7. Now coming to the aspect of punishment of dismissal the act of the first party who was working as a cashier quarrelling with his superior the branch manager in the presence of the customers and slapping him on his cheek being a grave misconduct, such an act do not attract any lesser punishment than the dismissal imposed by the Disciplinary Authority confirmed by the Appellate Authority assigning detailed reasons. In the result, I arrived at the conclusion that there are no reason to interfere either in the finding of the enquiry officer or the punishment imposed by the Disciplinary Authority confirmed by the Appellate Authority. Accordingly while answering point Nos (i&ii) in the 'negative' I pass the following award.

AWARD

The reference is rejected holidng that the action of the management of the Chairman, M/s. Pragathi Grameena Bank, H.O., Gandhi Nagar, Bellary in dismissing Shri P.S. Honnurvali, Ex. Employee from his services is legal and justified and he is not entitled for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 11-07-2012)

S. N. NAVALGUND, Presiding Officer

Annexure CR No. 87/2007

List of witnesses for the Management/Second Party

1.	Shri R.S. Thimmanagoud, Senior Manager	MW1

List of documents marked for the Second party/Management

1.	Charge sheet issued to the first party dated 31-03-2005	Ex. M1
2.	Proceedings of the enquiry along with documents marked for the management and CSE.	Ex. M2
3.	Enquiry Report dated 17-09-2005	Ex M3
4.	Letter addressed to the first party by the Disciplinary Authority dated 28-09-2005	Ex. M4
5.	Show cause notice of Disciplinary Authority dated 22-02-2006 issued to first party	Ex. M5
6.	Proceedings of Disciplinary Authority dated 31-03-2006	Ex M6
7.	Proceedings of the Disciplinary Authority dated 29-09-2006.	Ex. M7

List of witnesses for the First Party

1.	Shri P.D. Honnurvali, first party	WW1

List of document marked for the First Party

Nil

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 37/2011-12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल-12011/58/2011-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3013.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 37/2011-12) of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the industrial dispute between the management of the State Bank of India and their workman, received by the Central Government on 30-08-2012.

[No. L-12011/58/2011-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/37/2011-12

Party No.1 : The General Manager, State Bank of India, Personnel Management Deptt. 16th floor, Corporate Centre, Madame Cama Road, Post Box No. 12, Mumbai-21.

The Asstt. General Manager, State Bank of India, Administrative Office, S.V. Patel Marg, Kingsway, Nagpur-1.

V/s

Party No.2 : The Dy. General Secretary, State Bank Karmachari Sena, C/o, State Bank of India, Main branch, Station Road, Nagpur.

AWARD

(Dated: 7th August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of State Bank of India and their union, for adjudication, as per letter No. L-12011/58/2011-IR (B-I) dated 15-12-2011, for adjudication with the following schedule:—

"Whether the action of the management of State Bank in introducing the new scheme of payment of Ex-gratia Lumpsum amount in lieu of appointment on compassionate grounds, is legal and justified? Whether the demand of the union for appointment of Smt. Pramila N. Natkar W/o. Late Narayanrao Vithoba Natkar who died while in service on 26-05-2008, is legal and justified? To what reliefs Smt. Pramila N. Natkar, the legal heir of the deceased workman, is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to the notice the management of State Bank of India ("the party no. 1" in short) appeared on 01-05-2012 through their advocate. However, inspite of sufficient service of notice on the union representative as mentioned in the letter of reference, neither the union representative or anybody else appeared on behalf of the party no. 2 on 05-03-2012, to which date the reference was posted for filing of statement of claim. In the interest of justice, the case was adjourned to 01-05-2012, 26-06-2012 and 07-08-2012 for filing of statement of claim on behalf of party no. 2. As inspite of giving sufficient opportunities, the statement of claim was not filed by the party no. 2, by order dated 07-08-2012, the case was closed and was posted for orders.

3. It is well settled that when a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for the party to file statement of claim before the Industrial Court setting out grounds on which the order is challenged and the party must also produces evidence to prove his case. If the party fails to appear or file statement of claim or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the said party would not be entitled to any relief,

As in this case, the party no.2 has not filed any statement of claim setting out the grounds on which the order of the party no. 1 regarding introduction of new scheme of payment of Ex-gratia Lumpsum amount in lieu of apointment on compassionate grounds is challenged, the reference cannot be answered in favour of party no. 2. Hence it is ordered:—

ORDER

The reference is answered in negative. The demand of the union for appointment of Smt. Pramila N. Natkar W/o. Late Narayanrao Vithoba Natkar who died while in service on 26-05-2008, is illegal and unjustified. Smt Pramila N. Natkar, the legal heir of the deceased workman, is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3014.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 34/2011-12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल-12011/54/2011-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3014.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 34/2011-12) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 30-08-2012.

[No. L-12011/54/2011-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NAGPUR

Party No.1 : The General Manager, State Bank of India, Personnel Management Deptt., 16th Floor, Corporate Centre, Madame Cama Road, Post Box No. 12, Mumbai-21.

The Asstt. General Manager, State Bank of India, Administrative Office, S.V. Patel Marg, Kingsway, Nagpur-1.

V/s

Party No. 2 : The Dy. General Secretary, State Bank Karmachari Sena, C/o State Bank of India, Main Branch, Station Road, Nagpur.

AWARD

(Dated : 7th August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of State Bank of India and their union, for adjudication, as per letter No. L-12011/54/2011-IR (B-I) dated 07-12-2011, for adjudication with the following schedule:—

"Whether the action of the management of State Bank in introducing the new scheme of payment of Ex-gratia Lumpsum amount in lieu of appointment on compassionate grounds, is legal and justified? Whether the demand of the union for appointment of Smt. Indira Anil Kamble W/o. Late Anil Madhukar Kamble who died while in service on 16.02.2012, is legal and justified? To what reliefs Smt. Indira Anil Kamble, the legal heir of the deceased workman, is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement. In response to the notice the management of State Bank of India ("the party no. 1" in short) appeared on 01-05-2012 through their advocate. However, inspite of sufficient service of notice on the union representative as mentioned in the letter of reference, neither the union representative nor anybody else appeared on behalf of the party no. 2 on 05-03-2012, to which date the reference was posted for filing of statement of claim, In the interest of justice, the case was adjourned to 01-05-2012, 26-06-2012 and 07-08-2012 for filing of statement of claim on behalf of party no. 2. As inspite of giving sufficient opportunities, the statement of claim was not filed by the party no. 2, by order dated 07-08-2012, the case was closed and was posted for orders.

3. It is well settled that when a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for the party to file statement of claim before the Industrial Court setting out grounds on which the order is challenged and the party must also produces evidence to prove his case. If the party fails to appear or file statement of claim or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the said party would not be entitled to any relief.

As in this case, the party no. 2 has not filed any statement of claim setting out the grounds on which the order of the party no. 1 regarding introduction of new scheme of payment of Exgratia Lumpsum amount in lieu of appointment on compassionate grounds is challenged, the reference cannot be answered in favour of party no. 2. Hence, it is ordered:—

ORDER

The reference is answered in negative. The demand of the union for appointment of Smt. Indira Anil Kamble W/o Late Anil Madhukar Kamble who died while in service on 16-02-2010, is illegal and unjustified. Smt. Indira Anil Kamble, the legal heir of the deceased workman, is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का. आ. 3015.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मराठवाड़ा ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 01/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल-12012/138/2005-आईआर(बी 1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O.3015.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2006) of the Central Govt. Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Marathwada Gramin Bank and their workmen, which was received by the Central Government on 30-08-2012.

[No. L-12012/138/2005-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/01/2006 Date: 26-07-2012

Party No.1 : The Chairman,
Marathwada Gramin Bank, Head Office,
Shivaji Nagar, Nanded-431602(MS).

Versus

Party No. 2 : The General Secretary,
Marathwada Gramin Bank Employees
Federation, Shivaji Nagar,
Nanded-431602 (MS).

AWARD

(Date : 26th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Marathwada Gramin Bank and their workman, Shri Hanumant Raghunath Kamble, for adjudication, as per letter No. L-12012/138/2005-IR (B-I) dated 07-02-2006, with the following schedule:—

"Whether the management of Marathwada Gramin Bank, Nanded through its Chairman is justified in awarding punishment of degradation of four stage in increment pay scale to the workman Shri Hanumant Raghunath Kamble, Messenger-cum-Sweeper vide order dated 19-11-2001 for the act of misconduct listed as charge Nos. 1 and 3 of the charge sheet dated 05-06-2000? If not, what relief the said workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Marathwada Gramin Bank Employees Federation", ("the union" in short), filed the statement of claim on behalf of the workman, Shri Hanumant Raghunath Kamble, ("the workman" in short) and the management of Marathwada Gramin Bank, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected by the union in the statement of claim is that the workman is working as a Messenger-cum-Sweeper with party No.1 at Nanded branch since 20-02-1985 and his service record is clean and unblemished and a charge sheet was submitted against him containing three charges and a departmental enquiry was conducted against him and though the party No.1 failed to prove the charges and the evidence adduced by party No.1 was unreliable and quite insufficient to prove the charges against the workman, but still then the workman was held guilty and was awarded the punishment of degradation by four stages in the incremental scale with cumulative effect by order dated 19-11-2007 and the punishment is excessive and disproportionate in comparison to the misconduct proved against him.

The workman has prayed for a direction to party No.1 to modify the punishment and impose the punishment of "censure" instead of the punishment imposed against him.

3. The party No.1 in their written statement have pleaded inter-alia that the workman was charge sheeted for the misconduct of submitting false T.A. and conveyance bills and he had submitted T.A. bills with tempo receipts without actually shifting household goods to Salgara Diwti, the place of his transfer and in the departmental enquiry, two charges, charge Nos. 1 and 3 were found to be proved against him, on the basis of the documentary and oral evidence and the punishment of degradation of four lower stage in the increment with cumulative effect was awarded and the punishment imposed is just and proper and does not require any interference. The further case of party No.1 is that in the year 1991, the workman was issued with a charge sheet and after conducting of departmental enquiry, he was found guilty of the charges and punishment of "Reprimand" was awarded against him and he was also put under suspension for the misconduct of unruly behaviour in the bank and for coming to the bank with deadly weapon under the influence of liquor and for threatening the Branch Manager to kill him and charges Nos.1 and 3 were proved beyond doubt by themanagement by adducing both oral and documentary evidence in the departmental enquiry and the workman is not entitled to

any relief.

4. It is necessary to mention here that after filing of the statement of claim, the workman remained absent and did not contest the case. So, on 19-06-2012, order was passed to proceed exparte against the workman.

5. One witness, namely Khanderao Baburao Dixit has been examined by the party No.1 in support of their case. The evidence of the said witness is on affidavit. The evidence of the witness remained unchallenged, as none appeared on behalf of the workman to cross-examine him.

6. It is well settled that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail.

7. In this case, the workman in his statement of claim has not at all challenged the legality of the departmental inquiry. Moreover, neither he appeared nor adduced any evidence to show that the departmental enquiry held against him is illegal or not in accordance with the principles of natural justice. Hence, it is held that the departmental enquiry conducted against the workman is just and proper and in accordance with the principles of natural justice.

In this case, the workman, though has challenged the legality of the order of punishment imposed against him, he has not adduced any evidence to prove the illegality of the said order. So, applying the settled principles of law as mentioned above to the present case, it is held that the reference cannot be answered in favour of the workman and he is not entitled to any relief. Hence, it is ordered:—

ORDER

The management of Marathwada Gramin Bank, Nanded through its Chairman is justified in awarding punishment of degradation of four stages in increment pay scale to the workman Shri Hanumant Raghunath Kamble, Messenger-cum-Sweeper vide order dated 19-11-2001 for the act of misconduct listed as charges Nos. 1 and 3 of the charge sheet dated 05-06-2000. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 30 अगस्त, 2012

का.आ. 3016.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 24/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-08-2012 को प्राप्त हुआ था।

[सं. एल.-12012/282/2003-आईआर(बी-I)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 30th August, 2012

S.O. 3016.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2004) of the Central Government Indus. Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner and Jaipur, and their workmen, received by the Central Government on 30-08-2012.

[No. L-12012/282/2003-IR(B-I)]
RAMESH SINGH, Desk Officer

Annexure

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER,

CENTRAL GOVERNMENT INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 24 of 2004

Between

Sri Vijai Kumar Trivedi,
Son of Sri Chhunnu Lal Trivedi,
16/11, Bhagwat Dass Ghat,
Kanpur.

And

The Branch Manager,
State Bank of Bikaner & Jaipur,
122/124, Sarojani Nagar,
Kailash Puri, Kanpur.

AWARD

1. Central Government, MoL, New Delhi, vide notification No. L-12012/282/2003 : IR (B-1) dated 08-04-2004 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the Branch Manager, State Bank of Bikaner & Jaipur in terminating the services of its workman Sri Vijai Kumar Trivedi son of Sri Chhunnu Lal with effect from 01-01-97 is legal? If not to what relief the workman is entitled to?

3. Brief facts are that it is alleged by the claimant that the opposite bank has started a practice of appointing temporary hands for doing work of a regular/permanent nature to deprive such workmen from becoming regular employees of the bank and thereby depriving them benefit of the bank awards. Such appointments were made not exceeding 80 days in terms of the instructions of the Head Office to the branches. Under this practice the bank appointed the claimant as a peon with effect from 10-07-84 initially for a period of 80 days for doing the work of a permanent nature. Thus he worked intermittently for a period of 80 days in several spells right from 10-7-84 to 31-12-96 during which period his services were terminated

after 80 days and reappointed every time. Thus in every year he has completed 240 days of service. The opposite party abruptly terminated his services with effect from 1-1-97 without complying with the mandatory requirement of section 25F of the Industrial Disputes Act, 1947.

4. It is also stated that he was not the junior most when his services were terminated instead juniors were retained in service. Thus the opposite party has committed breach of section 25G of the Act.

5. It is also stated that the opposite party appointed fresh hands after terminating his services for the post peon without giving him any intimation as required under section 25H of the Act, athereby the opposite party has committed the breaching provisions of sections 25F, G and H of the Act and rules made there under and also breached the provisions of Bipartite Settlement.

6. Thus he has prayed that he should be reinstated in services with continuity and full back wages.

7. The opposite party has filed the written statement contradicting the aversions made by the claimant.

8. It is stated that from the record of the bank, salary register etc., it is found that the claimant was never appointed in the services of the bank nor any such record of his appointment or his attendance is available in the bank. It is denied that he was appointed on 10-7-84 by following a wrong policy. The record filed by the claimant appears to be suspicious and appears to have been fabricated. Signatures of Sri R. N. Sharma and B. K. Verma have been forged by the claimant. There is no post of water boy in the bank. It is also denied that his services were terminated on 1-1-97. Date of termination is contradictory as mentioned in the letter filed by the claimant. From the letter filed by the claimant, though it appears to be fictitious still the case is covered under Section 2(oo)(bb) of the Act. As per letter of the claimant filed by him he was appointed for fixed period of 80 days. There was no further renewal of the contract and the said contract stood terminated under stipulation contained therein in that behalf. There was no relationship of employer and employee between the opposite party and the claimant.

9. The bank has not violated the provisions of Sections 25F,G and H of the Act. It is wrong to say that fresh hands were appointed; therefore, the opposite party has specifically contradicted the aversions of the claimant and prayed for rejection of the claim.

10. The claimant has filed documentary evidence. These papers are No.7/2-7/11.

11. Both the parties have lead oral evidence.

12. Heard and perused the record.

13. The short question to be decided is whether the claimant was terminated with effect from 1.1.97.

14. Heard and perused the whole record thoroughly. It has been alleged and contended by the opposite party that the paper No. 7/2 even if believed on the face of record provides an engagement to the claimant as peon / water boy with effect from 10-7-84 to 27-09-84. The paper No. 7/3 to 7/5 are in the nature which specify the period of his working. The claimant has claimed to have worked; paper No.7/3 provides the claimant to have worked from 10-7-84 to 8-8-84. Similarly in papers 7-4-7/5 his period has been extended till 27-9-84. Thus if taken on record as it appears according to these papers the claimant has not worked for more than 80 days. Thus he has not worked for more than 240 days in that year.

15. It is contended by the opposite party that there are different date of termination as alleged by the claimant himself. He has drawn my attention towards paper No. 7/9 which is an application filed by the claimant along with registered receipt. In this application in Para 2 the claimant has specifically stated that the opposite party terminated his services from the post of peon-cum-water boy on 28-09-94. This application was sent through registered post as claimed by the workman on 03-09-02. Similarly in paper No.7/10 which has been filed by the claimant there are numerous over writing. It is contended by the opposite party that in the date column in Para 1, 2 and 3 etc., the date was written as 2-.09-84 but there appears interpolation and where ever there was year1984. It has been made 94 to cover the delay and to show that he has been working till that period. When he was cross examined on this point that according to these papers his services have been terminated on 28-09-94, he admitted that it is right, whereas the date of termination in the reference order is provided as 01-01-97, these dates are contradictory in nature. Claimant has failed to prove any such document or evidence which may prove that he has been terminated on 01-01-97 and he has worked for more than 240 days in a calendar year before the date of termination i.e. 01-01-97. His saying that thereafter since 1994 he was being paid through voucher does not appear to be believable. Opposite party has categorically stated that even if the documents are believed that is paper No. 7/2-7/5 the claimant has worked only for 80 days i.e. also in the year 1984. It is also stated that the case is very old and reference has been made in the year 2004. They do not keep such record of such person which is very old.

16. Claimant has stated that they have filed an application 13/1-2 for summoning documents.

17. This application is for summoning the records, of which the photocopies or duplicate have been filed by the claimant. I have seen this application. Even if this application is taken on record, there does not appear to be any mala fide of the opposite party in with holding the record because paper No. 7/2-7/5 have already been considered by me and paper No. 7/6-11 are the applications moved by the claimant before the opposite party but there does not appear to be any authenticity in these applications.

as these applications bears contradictions and interpolations at number of places.

18. Therefore considering all the circumstances oral as well as documentary evidence of both the parties, I am of the view that the claimant has miserably failed to prove that he had worked for 240 days in a calendar year before the date of his termination that is 01.01.97.

19. The claimant has admitted in his statement that he has no where stated that some junior has been engaged as well as he does not know whether any new recruitment has been made or not. Therefore, according to his statement there does not appear to be any violation of Sections 25 F, 25 G and 25 H or, 25 J of I.D. Act 1947.

20. Therefore, in view of the discussion made hereinabove, the claimant is not entitled to any relief.

21. The reference is therefore decided against the workman and in favour of the bank.

RAM PARKASH, Presiding Officer

नई दिल्ली, 31 अगस्त, 2012

का.आ.3017.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 95/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-08-2012 को प्राप्त हुआ था।

[सं. एल-12012/100/87-आईआर(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 31st August, 2012

S.O. 3017.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.95/91) of the Cent.Govt.Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 31/08/2012.

[No. L-12012/100/87-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/95/91

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

State Bank of India Employees Union(Bhopal Circle), 5/235, Pragati State Bank Staff Colony,

Behind Krishi Upaj Mandi,
Vikas Nagar,
Jabalpur (MP) Workman

Versus

Regional Manager,
Region I & II,
State Bank of India,
Regional office, Marhatal,
Jabalpur (MP) Management

AWARD

Passed on this 1st day of August 2012

1. The Government of India, Ministry of Labour *vide* its Notification No.L-12012/100/87/D-II(A) dated 22-23/4/91 has referred the following dispute for adjudication by this is tribunal:-

> "Whether the action of the management of State Bank of India in terminating the services of the under mentioned workmen with effect from the date(s) shown against their names and then not absorbing them in the permanent service of the Bank as per the provisions of the Memorandum of settlement dated 15-2-85 was justified? If not, to what relief the workmen are entitled to?"

2. The case of the Union/workmen, in short is that the workmen including Shri Raj Kumar Rajak were employed in the State Bank of India (in short SBI) at various offices/ branches under the control of Chief Regional Manager. The nature of work of these workmen was of permanent nature as there was no work of temporary or casual in nature in the Bank. The workmen were enrolled as member of the Union. The Union therefore raised disputes over illegal termination of the workmen and demanded that all such ex-employees should have been taken back with all benefits. During the pendency of the said dispute, the management Bank took a policy decision to offer employment to those workmen who had put in temporary service for not less than 90 days and a settlement dated 15-2-85 was arrived between the management Bank and the office bearers of the said Union. It is stated that the workmen were called upon to appear at the interview during mid of 1986 which was a farce and the same was done to turn out the workmen from services by taking a ground that they were found unsuitable in the interview. The action of the management is unjust, arbitrary, illegal, unfair and against the principles of natural justice and also in violation of the settlement arrived between the parties. It is submitted that the workmen are entitled to be absorbed in the permanent service of the Bank as per settlement dated 15-2-1985 with full back wages and other consequential benefits.

3. The management appeared and filed Written statement. The case of the management, *inter alia*, is that the workmen were engaged on daily wages in the various branches of the SBI as per details given in MW/1. It is stated that after termination of such daily rated workmen by the management, disputes arose before the Assistant Labour Commissioner (C) and ultimately with a view to

keep cordial industrial relation a settlement was arrived on 15-2-85. The terms of settlements are as follows :—

(1) It is agreed that all those temporary employees who have put in an aggregate of 90 days attendance or more as on 31-10-84 will be given a chance for consideration for permanent appointment irrespective of the fact whether or not their names were originally sponsored by Employment Exchange. This exercise will be done only as a special case on one time basis.

(2) It is further agreed that the temporary employees of overage, relaxation in the age will be given if he was found within the age limit prescribed for recruitment in subordinate cadre at the time of initial temporary appointment.

(3) The workmen covered by the settlement will not claim any backwages or benefits of their past services with the Bank.

(4) It is agreed that the above process of action will be completed by the Bank as early as possible a review will be made at this office after 60 days of this settlement and Bank will file a progress report to this respect.

(5) It is further agreed that all temporary vacancies arising after the settlement will be filed by those employees who had put in aggregate of 90 days attendance or more on the basis of Centre seniority at Centres having 3 or less offices/branches and wherein office/branches are more than 3 on the basis of office/branch seniority.

(6) The parties will submit their report on implementation of this settlement to the ALC(C) Jabalpur on or before 6th May ,1985.

It is stated that as a result of the settlement, the SBI scheduled interview on different dates during August 1985 and March- April-June 1986 for giving chance for consideration for permanent absorption. The workmen who completed in aggregate of 90 days attendance or more as on 31-10-1984 were called for interview as per details given in MW/1 and also as per recruitment rules. The applicants were found unsuitable in interview. Consequently their services were terminated. It is stated that many of the workmen not withstanding their unsuitability for permanent absorption had been engaged in temporary vacancies as and when such need had arisen in pursuance of para-6 of the settlement dated 15-2-1985. The management SBI had also similarly entered into Bipartite Agreement on 17-11-1987 and also on 9-1-1991 and so on subsequently. It is stated that the workmen were given a chance to face selection and they were found unsuitable in interview. It is also stated that the workmen had not completed 240 days during the preceding year of termination under Section 25 B of the Industrial Dispute Act, 1947 (in short the Act, 1947) and therefore they were not entitled to any protection of the Act, 1947. It is submitted that the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication—

I. Whether the action of the management in not absorbing them in the permanent service of the bank as per the settlement dated 15-2-1985 was justified?

II. Whether the action of the management in consequence in terminating the services of the workmen on dates as shown against their names was legal and justified?

III. To what relief, all or any of the workmen are entitled?

5. Issue No. I

Before discussing the issue, it is better to see as to what are the facts admitted by the parties. The facts are as follows which are admitted—

1. The workmen were engaged on daily wages in the various branches of the SBI.

2. The disputes were raised by the Union before the Asstt. Labour commissioner (C) Jabalpur which was ended in failure report.

3. The management Bank entered into a settlement with the aforesaid Union on 15-2-85 and the terms and conditions are given as below-

(1) It is agreed that all those temporary employees who have put in an aggregate of 90 days attendance or more as on 31-10-84 will be given a chance for consideration for permanent appointment irrespective of the fact whether or not their names were originally sponsored by Employment Exchange. This exercise will be done only as a special case on one time basis.

(2) It is further agreed that the temporary employees of overage, relaxation in the age will be given if he was found within the age limit prescribed for recruitment in subordinate cadre at the time of initial temporary appointment.

(3) the workmen covered by the settlement will not claim any backwages or benefits of their past services with the Bank

(4) It is agreed that the above process of action will he completed by the Bank as early as possible a review will be made at this office after 60 days of this settlement and Bank will file a progress report to this respect.

(5) It is further agreed that all temporary vacancies arising after the settlement will be filed by those employees who had put in aggregate of 90 days attendance or more on the basis of Centre seniority

at Centres having 3 or less offices/branches and wherein office/branches are more than 3 on the basis of office/branch seniority.

(f) The parties will submit their report on implementation of this settlement to the ALC(C) Jabalpur on or before 6th May 1985

4. The workmen were called for interview on the basis of settlement who had completed in aggregate of 90 days attendance or more as on 31-10-84.

5. After interview the services of these workmen were terminated on the ground that they were found unsuitable for permanent absorption in the Bank.

6. The parties had not submitted any report on implementation of their settlement to the ALC(C), Jabalpur on or before 6th May 1985 in terms of settlement as per clause-6 of the settlement.

6. Now the important question for determination is as to whether the workmen were entitled to be absorbed in the services of the bank as per settlement dated 15-2-1985. According to the Union/workmen, the terms and conditions the settlement are the only criteria tor consideration for permanent appointment in the services of the Bank of these workmen and the process of interview was a farce for rejecting the candidature of the workmen whereas the management has contended that the terms and conditions of the settlement are only to give a chance for consideration for permanent appointment and the recruitment rules are applicable for considering to give offer to the workmen for permanent absorption in the Bank services. The management called them for interview and the workmen appeared in the interview but were found unsuitable for appointment.

7. Now the settlement dated 15-2-1985 is to be examined as to what are the criteria fixed for considering permanent appointments in the Bank. The said settlement dated 15-2-1985 is admitted by both the parties and is marked as Exhibit W/2. The settlement shows that following ingredients are for considering for permanent appointment.

(a) The temporary employees who have put in an aggregate of 90 days attendance or more on 31-10-84 will be given a chance for consideration for permanent appointment.

(b) It is not necessary that their names were sponsored by the Employment Exchange or not.

(c) The overage relaxation will be given if he found within the age limit prescribed for recruitment in the subordinate cadre at the time of initial temporary appointment.

(d) The workmen covered under the settlement will not claim any back wages or benefits of their past services with the Bank.

(e) This exercise will be done only as a special case on one time basis.

It is evident that the exercise for giving a chance for consideration for permanent appointment is to be done as a special case to the workmen covered under the settlement. This itself shows that it was already settled between the management and the Union for diversion from recruitment rules as a special case. When the parties had decided to divert from the recruitment rules, the question to apply recruitment rules doesnot arise. Moreover the settlement is binding on both the parties as per the I.D.Act. However the management has not pleaded in his pleading as to what was the requirement of appointment in recruitment rules. The said recruitment rules is also not filed in the case. The management witness Shri D.P.Tamhane (H.R) at the Zonal Office. He has stated at para 43 in his evidence that to call for oral interview was on the ground of working days. He has further stated at para 54 that the selection and interview was done on the basis of settlement. Thus it is clear that the above settlement was the criteria for giving a chance, for consideration for permanent appointment in the Bank as a special case on one time basis.

8. The management has given details of work done by the workmen in MW/1 alongwith written statement which is part of pleading. The Union/workmen have not denied the said fact as given in MW/1. The management witness Shri D.P.Tamnane has also supported the said pleading of the management in his evidence at para-2. There is no cross-examination of the Union/workmen on the age or on the days of work done by the workmen. This shows that the workmen have also admitted about the days of work done by them and the age at the time of initial temporary appointment as has been given in MW/1.

9. Now let us examine the Annexure MW/1 and the evidence of the management witness. The Annexure MW/1 clearly shows that out of 69 workmen including Shri Raj Kumar Rajak whose name was added on the direction of the Hon'ble High Court, only 14 workmen namely 1. Ashok Kumar Upadhyay(S.No.8), 2. Devendra Kumar Srivastava(S.No.11), 3. Ganesh Pd.Saraf(S.No.12), 4. Gulab Singh yadav (S.No.14), 5. Krippa Sanker Sen (S.No.16), 6. Krishna Kumar Raikwar (S.No.39), 7. Rajender Kumar Bari(S.No.42), 8. Ramanand Pd. Mishra (S.No.43), 9. Ramesh Pd. Chaturvedi (S.No.48) 10. Ram Bahadur (Sl.No.49), 11. Arvind Kumar Srivastava (S.No.50), 12. Vinod Kumar Srivastava (S.No.51), 13. Girdhari Singh Sengar (S.No.52) and Sanjay Kumar Agrawal (S.No.54) had not put in an aggregate of 90 days attendance on 31-10-84 and only 14 these workmen were not entitled as per settlement (Exhibit W/2). The rest other workmen have fulfilled the criteria of working days. Another criteria is the age. The management has not given any evidence that the rest of the workmen who have fulfilled the criteria of working days were underage or overage at the time of initial temporary

appointment. The management has to prepare report as per settlement clause 6 but no report was submitted. The pleading of the management is vague and is not specific as to why they were not found suitable for the job. Annexure MW/1 of the management discloses that the workmen had not completed 240 days and therefore they were found unsuitable for the permanent absorption in service of the bank. This was not the criteria to reject the absorption as per settlement. There is no pleading of the management that what was the vacancies available at the time of alleged interview of the workmen. Moreover the evidence of the management and Annexure MW/1 also donot disclose that any of the workmen was disqualified for want of vacancies. The learned counsel for the management submitted that the management witness has stated at para 27 that there were 100 vacancies. This appears to be after thought, as there was no pleading of the management.

Thus the case and the evidence of the management clearly show that there is no case of the management as to why they were not suitable for permanent services of the Bank and thus the management was not justified in declaring them unsuitable for the services of the Bank in the light of settlement arrived between the management and the Union/Workmen which is binding on them and the management had taken a ridiculous pleading in rejecting the claim of the workmen who had completed 90 days or more on or before 31-10-84 and appeared to be within age limit at the time of initial temporary appointment.

10. The management has filed few charts prepared on the basis of interview and the same was proved by the management witness. The charts are marked as Exhibit M/1 to M/1(g). These charts are of few workmen and not of all the workmen of the reference case. Moreover the reason are not assigned as to why they were not found suitable. Except S.No.43 Shri R.P.Mishra and Sl.No.64 Shri Ashok Kumar Bhadhai who had not completed 90 days. Thus the documentary evidence also shows that there is no reason for declaring all the workmen unsuitable as has been discussed above.

11. On the other hand, the Union/Workmen has adduced evidence in the case. The Union has examined 15 witnesses in support of the case who were cross-examined by the management. Other evidence of the witnesses filed by the Union have not been cross-examined, as those witnesses did not turn up. The witnesses examined in the case are 1. Shri Mandharilal Chakravarty, 2.Shri Ram Gopal Pandey, 3. Vijay Shanker Paroha, 4. Ram Niwas Kori, 5. Ramanandan Pd. Mishra, 6. Kishore Pd. Dwivedi, 7. Shanker lal Dubey, 8. Devender Kumar Shrivastava, 9. Ramesh Das Bairagi, 10. Bharat Pd.Srivas, 11. Brij Mohan Mishra, 12. Sanjay Kumar Agrawal, 13. Gulab Singh Yadav, 14. Rajender Kumar Tiwari and 15. Rajkumar Rajak. They have supported the case of the Union. They have stated in their evidence that they were engaged as casual labourers on daily wages. They have admitted the period of work done by them as has been given by the management. This shows that the management as has given the period of work done by these workmen in MW/1 alongwith his Written Statement is admitted by the Union witnesses. Thus it is clear that except 14 workmen as has been discussed earlier, others had completed in aggregate of 90 days attendance or more as on 31-10-1984 and were entitled to be considered for permanent appointment/absorption in the Bank in accordance with the settlement, if other condition of the settlement was fulfilled.

12. The Union has also filed documents in the case. The management witness Shri D.P.Tamhane has admitted these documents in his evidence. As such these documents are marked as Exhibit W/1 to W/3. Exhibits W/1 is a circular issued by Chief General Manager with respect of engagement of temporary employee in Staff subordinate. This is filed to show that the workmen were being engaged in the said manner in temporary services. Exhibit W/1(a) is another circular dated 24-1-84 issued by the General Manager (Operation) with respect to temporary appointment in staff subordinate. This is also filed to show that the casual labours/temporary employees were engaged by the management in the various branches of the management and time to time circulars were issued as a guideline. Exhibit W/2 is the settlement dated 15-2-1985. The relevancy of this settlement has already been discussed earlier. The management has admitted the settlement even in his pleading. Exhibit W/3 is the termination letter dated 25-4-1987 of the workman Shri Brij Mohan Mishra whereby he was terminated with immediate effect. This is filed to show that the management called him in interview for permanent absorption in the Bank but his candidature was rejected on the ground that he was found unsuitable. This is filed to show that no specific reason is assigned as on what ground he was found unsuitable in terms of settlement. This clearly shows that the action of the management was arbitrarily as no specific reason is assigned that clause of settlement is not fulfilled by them. Moreover there is no pleading of the management that there were limited number of vacancies. Thus the evidence of the Union shows that the action of the management in not absorbing the workmen except 14 workmen whose names are discussed above, in permanent service of the Bank in term of settlement dated 25-2-85 is not justified.

13. The learned counsel for the management has argued that the management has taken a plea that the State Bank of India Employees Union, Bhopal circle is not a recognised Union and is not the representative Union of workers of the SBI. It has not been recognised and therefore it cannot legally sponsor the case of SBI employees nor can it validly represent them. It is stated by the management that Shri D.P.Tiwari is self styled secretary. This fact shows the attitude of the management towards these workmen. It appears to be ridiculous. Exhibit W/2 is the settlement dated 15-2-1985 which is admitted by the management and on the

basis of this settlement, the management is said to have taken the interview of the workmen and rejected to absorb them on the ground of unsuitability. The said settlement dated 15-2-1985 clearly shows that the management on the one side and the office bearer Shri D.P.Tiwari, Dy.General Secretary and Shri P.C.Khata Asstt. Secretary of the said Union on other side entered into a settlement in presence of Asstt. Labour Commissioner (C)Jabalpur. This itself shows that the management had accepted the authority of the office bearers and the Union. Now at subsequent stage, the management is challenging the authority to represent these workmen. This itself shows that the management cannot deny when he had entered into a settlement after recognizing the Union. This shows that the said Union has full right to represent these workmen in the reference case.

14. The learned counsel for the management urged that the workmen had participated in the interview and therefore the workmen cannot deny that there was no clause in the settlement for interview and the alleged interview was unjustified. The learned counsel for the management has relied a decision reported in (2009)1.S.C.C.768, Tridip Kr. Dingal & Ors Vrs. State of West Bengal and Ors. The said decision is not applicable in the case because this reference is based on settlement. Moreover simply by appearing in interview it does not mean that the settlement was not applicable and the recruit rules would be applicable. The settlement is made for absorption in the permanent service of the Bank as a special case and is binding on the parties under Section 18(1) of the Industrial Disputet Act, 1947.

15. The learned counsel for the management has argued that the Union/workmen cannot challenge the recommendation of the Selection Committee except on the ground of mala fide or serious violation of the statutory rules.

The learned counsel has relied the decisions reported in (2008)2.S.C.C.119 M.V.Thimmuaiah & Ors Vrs. Union Public Service Commission & cors, (2010)12 S.C.C.576 Manish Kr Shahi Vrs. State of Bihar & ors and (2012) 2 M.P. H.T. 477 Jageshwar Prasad Raidas and another Vrs. M.P.State Electricity Board and others. These rulings are not applicable in this particular case specially because this case is based on settlement. Secondly no minimum criteria or the marks was prescribed in advance at the time of interview and lastly the specific reason for rejection from absorbing them the service is neither pleaded nor communicated to the workmen. These all facts clearly show that there was serious violation in not taking a decision by the selection committee as per the settlement dated 15-2-1985 arrived between the parties. There was no sufficient grounds to the management in rejecting the absorption of these workmen except 14 workmen as has been discussed above.

16. The learned counsel for the management submits that if these workmen are taken in employment, it will affect the employees who are already in employment. It is stated that they are not impleaded as a party to the reference. The learned counsel for the management has relied a decision reported in (2011) 6 S.C.C.570 J.S.Yadav Vs. State of Uttar Pradesh & Another. This ruling is also not applicable. It is clear that the management has not taken any plea in written statement that such employees whose names are not disclosed would be affected if they would be taken in permanent service. This fact cannot be presumed that any existing employee is going to be affected. Moreover there was also no case that there was limited number of vacancies and the workmen who came in the criteria on the basis of settlement, were more in number. There is no documentary evidence to show that the management had announced the vacancies before interview of these workmen. This fact cannot be accepted that existing employees will be affected. Considering the discussion made above, this issue is decided in favour of the Union/Workmen and against the management in the light of observation made above.

17. Issue No. II

The evidence of the management witness Shri D.P.Tamhane shows that the workmen had not worked 240 days in twelve calendar months preceding the date of termination as indicated in the reference order. This shows that their services shall not be continuous for a period of one year as has been required under Section 25(B)(2) of the Act, 1947. This shows that there is no violation of the provision of Section 25-F of the Act, 1947. However the termination of the workmen except 14 workmen as has been discussed above in violation of the settlement is illegal. Accordingly the issue is answered.

18. It appears from the pleading of the Union/Workmen that there is no pleading that after termination from services, they were not in gainful employment. As such they are not entitled to any back wages.

19. Issue No. III

On the basis of the discussion made above, it is clear that the action of the management in not absorbing the workmen except 14 workmen as has been discussed above in the permanent service of the Bank as per settlement dated 15-2-1985 is not legal and justified. It is pointed out by the counsel of the Union that some of the workmen have been taken in the permanent employment in the Bank subsequently and one of the workman has crossed the age of superannuation. Accordingly the management is directed to reinstate them and thereafter absorbed these workmen in permanent cadre of Sub-staff except 14 workmen as has been named above. The workmen, who are already in employment in the Bank will not be affected from this award. The workmen, if any, who have crossed the age of superannuation are to be paid Rupees two Lacs (Rs.2,00,000) each as compensation by the management. The management is directed to comply within two months from the date of award. Accordingly the reference is answered.

20. In the result, the award is passed without any costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 31 अगस्त, 2012

का.आ. 3018.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दौर प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 201/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2012 को प्राप्त हुआ था।

[सं. एल-12012/159/95-आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 31st August, 2012

S.O.3018 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 201/96) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 31-08-2012.

[No.L-12012/159/95-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/201/96

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Ram Nagwanshi, Secretary,
All India State Bank of Indore
Employees Congress,
9, Sanver Road, Ujjain — Workman

Versus

Regional Manager (III),
State Bank of Indore,
Kanchan Bagh, Indore — Management

AWARD

Passed on this 9th day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/159/95-IR (B-I) dated 29-10-96 has referred the following dispute for adjudication by this tribunal:-

> "Whether the action of the management of State Bank of Indore in relation to their Pandu Tablab Branch (Distt. Dewas) in terminating the services of Shri B.S. Verma, Head Cashier is legal and justified? If not, to what relief the workman is entitled?"

2. The case of the Union/workman, in short, is that the workman Shri B.S. Verma was appointed on 2-3-1984 at P.Y. Road Branch of the management Bank as clerk-cum-cashier. He was promoted to the post of Head Cashier at Pandav Talab Branch. He joined there on 9-3-92. It is stated that on 3-6-92 after bank hours he went to his residence but in the night, he got information about serious illness of his only son who was handicapped then after keeping an application of leave and bank's safekey in an envelope he dropped in the premises of the Bank. Thereafter he himself became ill at his village home at Lalitpur. He gave his leave application alongwith medical certificate but the management gave an information at his village home that he had been treated as voluntarily retired from the bank service. He went to join the duty but he was not allowed to join there and it was told that Rs. 500 was found shortage in the head balance. It is stated that he did not want to retire voluntarily. He had given several representations for sympathetical consideration but he was finally informed vide letter No. 6499 dated 16-12-93 that there would be no change in the decision to treat him as voluntarily retired from service. It is stated that in several other serious cases, the management had taken them in services. It is stated that no showcause notice was given nor any enquiry was done in accordance with the provision of voluntarily retrenchment and had given representations repreatedly for joining on duty. On these grounds, it is submitted that the order of voluntary retirement be set aside and the workman be reinstated in the service of the Bank.

3. The management appeared and filed Written Statement in the case. The case of the management, inter-alia, is that the workman was not member of the Union nor the Union was competent to raise dispute of the workman. It is admitted that the workman was apointed on 2-3-1984 as clerk-cum-cashier and on his consent he was posted at Pandav Talab Branch as Head Cashier. He worked there from 9-3-1992 to 3-6-1992. Theafter he became unauthorized absent w.e.f. 4-6-1992 without information and without any leave application and without legally handing over the key of the safe of the Bank. As a result of which the cash of the bank was not opened from 5-6-1992 to 10-6-1992. The cash of Rs. 500 was also found shortage. The police was also informed. It is stated that in view of the Bipartite Settlement. the order of voluntary retirement w.e.f. 17-10-92 of the workman was passed which is legal. Before passing the order, the notice was published in a local newspaper and he was called upon to report on duty within 30 days of that notice but he did not report on duty nor gave any reply of reasonable cause of his absence. The contention of the workman that he sent leave applications and medical certificates are not true. It is stated that in case it is found that the procedure whereby the order of voluntary retirement of the workman is passed is defective, then the management be given opportunity to prove the misconduct in Court. It is submitted that the reference is fit to be dismissed.

4. On the basis of the pleadings of the parties, the following issues are for adjudication :—

I. Whether the action of the management in terminating the services of the workman is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I

On the pleadings of the parties, it is evident that the following facts are admitted which are not necessary to be proved-

I. The workman Shri B.S. Verma was appointed as clerk-cum-cashier on 2-3-1984 in the management Bank and at the relevant time, he was posted as Head Cashier at Pandav Talab Branch of the management Bank.

II. He worked there from 9-3-92 to 3-6-1992.

III. He became absent from 4-6-92 without any sanctioned leave and without handing over the key of the safe of the Bank to the competent authority legally.

IV. He was relieved from services w.e.f. 7-10-1992 in view of Bipartite Settlement as treated him voluntary retired on his absence from 4-6-1992.

6. Now the important question is as to whether the action of the management to treat the workman voluntary retired from Bank Service in view of Bipartite Settlement is legal and justified. Before dealing the evidence, it is proper to reproduce the provision of Bipartite Settlement of voluntary retirement. The workman has filed extract which is admitted by the management and is marked as Exhibit W/2. The same is reproduced as under :—

कर्मचारियों द्वारा सेवा नियोजन की स्वैच्छिक समाप्ति

8 सितम्बर, 1983 के समझौते के खण्ड 2 के अधिकमण में निम्नलिखित लागू होगा :

जहां किसी कर्मचारी ने छुट्टी का आवेदन-पत्र नहीं दिया है और वह बिना किसी जमा छुट्टी के या जमा छुट्टी से अधिक 90 दिन या उससे अधिक दिनों तक कार्य से लगातार अनुपस्थित रहता है या पहले मंजूर की गई या तदनंतर आगे बढ़ाई गई छुट्टी की अवधि के बाद भी 90 दिन या उससे अधिक दिनों तक लगातार अनुपस्थित रहता है और इस बात का संतोषप्रद प्रमाण हो कि कर्मचारी ने भारत में कोई अन्य रोजगार ग्रहण कर लिया है अथवा प्रबंधकवर्ग इस तथ्य से संतुष्ट हो कि उसका फिलहाल काम पर उपस्थित होनें का इरादा नहीं है तो प्रबंधकवर्ग इसके बाद कभी भी कर्मचारी के अंतिम ज्ञात पते पर उसे नोटिस जारी करने के 30 दिन भीतर कार्य पर उपस्थित होने का नोटिस दे सकता है जिसमें, अन्य बातों के साथ-साथ, प्रबंधकवर्ग द्वारा इस नतीजे पर पहुँचने के आधार का उल्लेख हो और, जहां उपलब्ध हो, उसका आवश्यक प्रमाण भी हो कि कर्मचारी का इरादा काम पर उपस्थित होने का नहीं है। यदि कर्मचारी 30 दिन के भीतर काम पर उपस्थित नहीं होता या वह प्रबंधक वर्ग को अपनी अनुपस्थिति के संदर्भ में संतोषप्रद स्पष्टीकरण नहीं देता कि वह दूसरा रोजगार या उप-व्यवसाय नहीं कर रहा है और उसका इरादा काम पर न जाने का नहीं है, तो कर्मचारी को उक्त नोटिस की अवधि समाप्ति पर बैंक की सेवा में स्वेच्छया सेवानिवृत माना जायेगा। कर्मचारी द्वारा संतोषप्रद उत्तर दिए जाने पर सेवा के कानून या नियमों के अंतर्गत किसी भी कार्यवाही करने के बैंक के अधिकार पर प्रतिकूल प्रभाव डाले बिना उसे पूर्वोक्त नोटिस की समाप्ति की तारीख से 30 दिन के भीतर काम पर उपस्थित होने की अनुमति दी जाएगी।

7. Now the evidence of the Union/workman is to be examined to determine the point for consideration. The workman Shri B.S. Verma has stated that when on 2-3-92 he came at his residence after work from the Bank, he came to know about the illness of his son. Thereafter after keeping an application of leave and the key of the safe of the Bank in an envelop dropped the same in the Bank Premises. After leave, when he came to join the duty, he was not allowed to join the same and told him to bring order from the Regional Manager where he was informed that he was treated as voluntary retired w.e.f. 3-6-1992. His evidence does not disclose as to for how many times he gave the applications for leave and as to when he came to join on duty. The entire evidence appears to be vague and the story of dropping his application of leave and after leave he came to join duty is not believable. He has admitted in his cross-examination that he was absent from 4-6-1992 for 7-8 months. He has further stated that during those period he did not give any application. This clearly shows that the case of the Union/workman that he gave an application of leave and the key of the safe of the bank by dropping the same in the Bank premises is completely false and has contradicted from his evidence. This shows that he was unauthorized absent without leave and had not informed the management about his absence with reasonable cause. Thus his evidence is not sufficient to prove his case.

8. The workman has also filed documentary evidence which are either admitted by the management or by the management's withness. Exhibit W/1 is the reference order. Exhibit W/2 is the incomplete clauses of Bipartite Settlement. Exhibit W/3 is the letter dated 25-3-08 to the workman by the Branch Manager. The learned representative of the workman argued that this letter shows that the Branch Manager directed him to join in 2008 and he appeared but he was not allowed to join on duty. The said letter does not show that the Branch Manager had directed to join on duty rather he was directed to appear within three days otherwise legal action was to be taken. A notice was published in the local newspaper of his voluntary retirement which is filed by the workman and is marked as Exhibit W/5(B). The said notice clearly shows that he had failed to report on duty by 7-10-1992 and it is deemed that he had voluntarily retired form service from 7-10-92 and he was called upon to pay to the Bank within 15 days of the date of notice one month's pay and allowance in lieu of notice failing which the bank would constrained to file a suit for recovery of the same without prejudice to

its right to set off terminal dues. It is clear that in context of the said notice, the said letter (Exhibit W/3) was not at all for joining in the service when he was already treated as voluntarily retired without cancelling the said order by the competent authority rather it shows that it was for compliance of the above notice.

9. Exhibit W/5 is the reply of the management before the Asstt. Labour Commissioner (Central), Indore. This reply is incomplete. However the management has denied the claim of the Union/workman and has supported the case of the management. Exhibit W/5(A) is the notice given by the management in the local newspaper (Daily Naidunia) on 7-9-1992 whereby he was noticed that he was unauthorized absent and was directed to join within 30 days of the notice failing which he would be treated as retired from the service. Exhibit W/5(B) is another notice dated 6-11-1992 published in Local Newspaper Naidunia whereby he was treated as voluntarily retired from service on failure to report on duty in consequence of unauthorized absence. Exhibit W/4 is filed to show that the workman went to join in the Branch of the bank after 15 years in response of Exhibit W/3 but he was not allowed to join. It has already been discussed that Exhibit W/3 was not a letter to the workman for joining the duty as he was already treated as voluntarily retired in view of Bipartite settlement between the Union and Bank management. Exhibit W/6 is showcause to Shri Ramesh Sirsat for unauthorized absence. This notice is not related to this reference case. Exhibit W/7 is showcause to another employee for unauthorized absence. Exhibit W/8 is the warning letter to the Officer Shri B.S. Sangar after considering his explanation. This case is not related to this reference case and it is not known that what was the circumstances in the said case in which there was loss of keys of safe. This reference cannot be compared. Thus from oral and documentary evidence, it is clear that the workman was absent without any application for more than 90 days continuously. He was properly noticed by publication in the newspaper at the place of available address to appear within 30 days with clear direction that in failure to join duty, he would be deemed to be voluntarily retired from the Bank Services. It is also clear from the evidence that within the specified period, the workman did not appear nor gave any reply with reasonable cause of his absence. This shows that the management had rightly inferred that the workman had become gainfully employed some where else and had no interest to continue in the Bank Services.

10. On the other hand, the management has also examined one witness namely Shri Suman Kr. Shahi who is presently Branch Manager at Punjapura branch. He has supported the case of the management. He has stated that the workman became absent all of a sudden on 4-6-1992 from the Bank without handing over the keys and without giving any application for leave. As a result from 5-6-92 to 10-6-92, the cash branch was not opened. The police was also informed as he was traceless. When he did not turnup on duty, he was voluntarily retired w.e.f. 7-10-92 after complying the provision of Bipartite settlement. Thus the evidence of the management also corroborates that the workman was absent and became traceless from duty and in view of the Bipartite settlement, he was deemed to be voluntarily retired from service w.e.f. 7-10-92. This issue is decided against the workman and in favour of the management.

11. Issue No. II

On the basis of the discussion made above, it is clear that the action of the management to consider the workman as voluntarily retired in view of the provision of Bipartite Settlement is legal and justified. The workman is not entitled to any relief. Accordingly the reference is answered.

12. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 31 अगस्त, 2012

का.आ. 3019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन्पीसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण संख्या. 2, मुम्बई के पंचाट (आईडी संख्या 53/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-08-2012 को प्राप्त हुआ था।

[सं. एल-42012/262/2002-आईआर(सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 31st August, 2012

S.O. 3019 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.53/2008) of the Central Government. Industrial Tribunal-cum-Labour Court No.-2, Mumbai as shown in the Annexure in the industrial Dispute between the employers in relation to the management of NPC and their workman, which was received by the Central Government on 31-08-2012.

[No.L-42012/262/2002-IR(C-II)]
B. M. PATNAIK, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT
K.B. KATAKE Presiding Officer
REFERENCE NO. CGIT-2/53 of 2008
EMPLOYERS IN RELATION TO THE MANAGEMENT OF NUCLEAR POWER CORPORATION

M/s. Nuclear Power Corporation
Tarapur Atomic Power Station
P.O. TAPP
Distt. Thane 401 504.

AND

Their Workman
Shri Anant L. Nikam
P.O. Kulwandi Vadachi Wadi
Tah. Taluka Khed
Distt. Ratnagiri
Ratnagiri (MS).

APPEARANCES:

For the Employer : Mr. V.J. Kantharia, Adv. i/b Rajesh Kothari & Co.

For the Workman : In person.

Mumbai, dated the 25th June, 2012

AWARD PART-II

The Award Part-I in this reference was passed on 08/07/2011 wherein it was held that inquiry conducted against the second party workman was fair and proper. In first part it is also held that the findings of the inquiry officer are not preverse.

2. Now in this Part-II award following are the remaining issues framed by my ld. Predecessor for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
3.	Is second party entitled to reinstatement and back-wages with continuity of service?	As per final order
4.	What order?	As per final order.

REASONS

Issue Nos. 3 & 4:—

3. In this respect, at the outset I would like to point out that when the inquiry is held fair and proper and findings are declared not perverse, the proper issue ought to have been whether the punishment of termination of services of second party is proportionate to the proved misconduct? Though the issue is not properly worded the point for determination before me is the same. Therefore it is unnecessary in wasting time in recasting issues. In this respect the ld. Adv. for the first party submitted that the second party workman was found absent from duty and had left the H.Q. without permission. The charge to that effect was proved against him. The charge of insubordination and threatening the other employees of the company were also proved against the second party. Therefore he submitted that the punishment of termination of services is quite proportionate to the proved misconduct. He further submitted that it is the jurisdiction of the disciplinary authority to award the punishment and determine the quantum thereof. As the punishment awarded by the disciplinary authority is quite just, proper and proportionate, therefore the Tribunal or even High Court need not interfere therein. In support of his argument the ld. Adv. resorted to Apex Court ruling in **Om Kumar & ors. V/s. Union of India (2001) 2 SCC 386** wherein on the point the Hon'ble Court observed that;

> "The quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of High Courts under Article 226 of Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury Principles."

4. In this respect the ld. Adv. for the first party further submitted that the Industrial Tribunal need not interfere in the Punishment as it is not shockingly disporportionate. In support of his argument the ld. adv. for the first party resorted to Apex Court ruling in **v. Ramana V/s. A.P.S.R.T. C. & Ors. (2005) 7 SCC 338** wherein on the point of punishment, Hon'ble Court in para 12 of the judgement observed that;

> "To put it differently unless punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court or the Tribunal, there is no scope for interferences."

In this respect I would like to point out that in the same para the Hon'ble Court further observed that :

> "..... To shorten litigations it may, in exceptional and rare cases impose appropriate punishment by recording cogent reasons in support thereof."

5. In the light of the discussion and the ratio laid down by Hon'ble Apex Court it is clear that the Tribunal can interfere in the punishment merely when it is found shockingly disproportionate to the proved misconduct. Now the question before me is; whether the punishment of termination of services of the workman is shockingly disproportionate to the proved misconduct? On the point ld. Adv. for the first party submitted that wilful absentee as well as arrogant behaviour are sufficient reasons to impose the punishment of termination of service. In support of his argument, the ld. Adv. resorted to Apex Court ruling in **State of Rajasthan and Anr. V/s. Mohd. Ayub Naz (2006) 1 SCC 589.** In that case, the disciplinary authority had removed the workman therein from services for absenteeism. Hon'ble High Court set aside the punishment of removal from service as the bench found punishment shockingly disproportionate. The Hon'ble Apex Court set aside the order of High Court and restored the punishment. On the point Hon'ble Apex Court in para 13 of the judgement observed that:

> "..... We ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment."

6. In this respect I would like to point out that, the facts in the case at hand are quite different. In the above referred case the employee was absent from service for about 3 years. Therefore the Hon'ble Court held that he was rightly removed from the services and the punishment was held proportionate. In the case at hand, the second party

workman herein was not found guilty for absenteeism as in the above referred case. He was found guilty for remaining absent for only 25 days. Therefore the ratio laid down in the above ruling in respect of absenteeism and remaining absent for a period of 3 years would not be attracted to the set of facts of the present case.

7. In this respect the Id. adv. for the first party submitted that the second party workman was found guilty for leaving H.Q. without permission and remaining absent for 25 days as well as he had refused to accept the notice and threatened the official who tried to serve notice on him. It also amounts to insubordination. He therefore submitted that the workman was found guilty for remaining absent without intimation as well as he was also found guilty for threatening the co-workers and for insubordination. Therefore the Id. adv. submitted that the punishment of termination of service is not shockingly disproporationate. In support of his argument the Id. adv. also resorted to another Apex Court ruling in **Tusshar D. Bhatt V/s. State of Gujarat and Anr. (2009) 11 SCC 678** wherein the workman remained absent unauthorisedly for more than six months for defying transfer order and also made unwarranted allegations against superior officers. In the circumstances Hon'ble Court held that the order of dismissal passed by the competent authority of management was justified. The Hon'ble Court in this case observed that;

> "The appellant was not justified in defying the transfer order and to level allegations against his superior and remaining unauthorised absent from official duties for more than six months....."

The Hon'ble Court further observed that:

> "Absenct from duty with out proper intimation is a grave offence warranting removal from service."

8. The Id. adv. also resorted to Bombay High Court ruling in **Tata Engineering Locomotive Co. Ltd. V/s. Ishwarchand Tarachand Jain & Anr 2007 (6) Bom. CR 427** wherein the Hon'ble Court found that the explanation given by the worker for his unauthorised absence was not adequate and not believable. His past service record also does not warrant lenient view. In the circumstances, Hon'ble Court held that the dismissal from service was a proper punishment and approval granted by Industrial Court was confrmed.

9. In this respect I would like to point out that in the earlier ruling of **Tusshar D. Bhatt** (referred supra) the workman therein was absent from duty for more than six months and it was in order to defy the transfer order. The workman in that case had also made unwarranted allegations against superior officers. In the second case Ishwarchand Jain (supra) the workman was absent for several years and his explanation for absence was vague and unacceptable. Therefore in both these case Hon'ble Apex Court as well as Hon'ble High Court held that the punishment of termination was appropriate punishment.

10. The Id. adv. also resorted to another Bombay High Court ruling in **Nazim Abdul Karim Sheikh V/s. Pimpri Chinchwad Municipal Transport Corporation & Anr. 2000 (4) Bom. CR 436** wherein the Hon'ble Court upheld the punishment of termination of service for unauthorised absent. However in that case also the workman was absent for 93 days. In all these cases the period of absence is much more. In some cases it is in months and in one case he was absent for several years. Therefore the punishment of termination was held appropriate.

11. In the case at hand, the period of absenteeism is only for 25 days i.e. he was absent from 18/12/1995 to 12/01/1996. The workman has given explanation that he had gone for medical check up to Military Hospital. He is disable, ex-servicemen. According to him he was called at the Military Hospital for medical examination. It is alleged that neither he took permission to leave headquarters nor obtained leave and left the headquarters without permission. He is a disable ex-serviceman and was called for medical exmaination in the Military Hospital. It seems that inadvertently he failed to apply for leave and permission to leave head quarters. Neither he was charged for habitual absenteeism nor period of his absence was such a vast as has been found in the above referred rulings. In the circumstances, the punishment of termination of service for the absence of 25 days can be said shockingly disproportionate. The other charge of misconduct is that the workman refused to accept the envelope of show-cause notice and alleged to have threatened the collegues to see him who tried to serve him with the notice. These charges are incidental to the main charge of misconduct of unauthorised absence. From the facts and circumstances on record, it seems that, the workman was annoyed as show-cause notice was issued to him and in the heat of anger he refused to accept the envelope and uttered some words to his senior colleagues to see him etc. In short, the charges of insubordination also cannot be said too serious to award punishment of termination of services of the workman.

12. Furthermore I would like to point out that though legal aid was offered to the workman, he refused the help of any advocate and conducted the proceeding personally. Every time he was making unwarranted demands and misinterpreting the orders and papers on record. It is also fact that being a layman, he was not able to conduct the matter properly. That apart, the punishment is also found to be shockingly disproportionate. In the light of the above discussion, I come to the conclusion that, the misconduct proved against the workman is not too serious to award punishment of termination of his services. The purpose would have been served by withholding of one or two increments, with a stringent warning. In this backdrop I hold that the punishment of termination is not just, proper and the same is disproportionate. In case, matter is remanded to the inquiry officer for reconsideration of the

point of punishment, it would unnecessarily protract the matter for few more years. The workman was temrminated from services some ten years back. In the circumstances to avoid further delay in the matter, instead of sending the matter back for deciding the point of punishment, I think it proper to decide it in this reference.

13. In the light of above discussion, it is clear that, the punishment of termination of services is shockingly disproportionate to the proved charges against the workman. Therefore he can be reinstated by withholding his two increments. In respect of back wages it is settled principle that, no work, no pay. Thus with some percentage of back wages he can be reinstated. In this respect I would like to point out that, during last ten years period workman is out of service and seems got annoyed with the officials of the management. Now the relation between the workman and the officials of the management seems to have strained. Furthermore the workman may have reached near to the age of superannuation. In the circumstances to meet the ends of justice I would like to give option to the management either to reinstate him by withholding his two increments with 15% back wages or to pay him compensation to the tune of Rs. 75,000 in lieu of his remaining service/back wages etc. He is also entitled to PF, Leave encashment and other retirement benefits as permissible under the rules by treating it as compulsory retirement from the date of award. Accordingly I, partly allow the reference and proceed to pass the following order.

ORDER

The reference is party allowed with no order as to cost.

The punishment of termination of services of the workman is hereby set aside. Instead of that, the option is given to the management either to reinstate the workman by withholding his two increments with 15% back wages from the date of his termination till the date of his reinstatment **OR** to treat the workman as retired compulsorily from the date of this award' and to pay compensation of Rs. 75,000/- in lieu of his service and back wages, and is also directed to pay his provident fund, leave encashment and all other retirement benefits as per the rules.

Date: 25/06/2012 K. B. KATAKE, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ. 3020.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कमान्डेन्ट, आर्मी एअर बोर्न ट्रेनिंग स्कूल, आगरा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 05/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2012 को प्राप्त हुआ था।

[सं॰ एल-14012/86/1999-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 3rd September, 2012

S.O. 3020.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Commandant, Army Air Borne Training School, Agra and their workman, which was received by the Central Government on 03.09.2012.

[No. L-14012/86/1999-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SRI RAM PRAKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 5 of 2000

Between—

Balram Singh Yadav,

S/o Sri Ram Swarup,

C/o Sri Surender Singh,

Resident of 43/16, Sector 15-A,

Sector 16, Sikandra,

Agra.

And

Commandant,

Army Air Borne Training School,

Tata Gate,

Fatehpur Sikri Road,

Agra.

AWARD

1. Central Government, MoL, New Delhi, vide Notification No. L-14012/86/99-IR(DU) dated 27-01-2000, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the Commandant Canteen Officer, Army Air Borne Training School, Agra in terminating the service of their workman Sri Balram Singh Yadav with effect from 15-10-98 is legal and justified? if not, to what relief the concerned workman is entitled?

3. Brief facts are–

4. It is alleged by the claimant that he was engaged as a Billing Clerk under the opposite party with effect from 01-09-93 and he was being paid Rs.1500 per month. On 15-10-98 his service was terminated without any reason, without making compliance of the provisions of Industrial Disputes Act, 1947, mainly on the ground that he raised his demand before the management that in these hard days it is very impossible to manage his family affairs on account of receiving a meager amount of Rs. 1500.

5. It is stated by him that he has completed 240 days in every year. After terminating the services of the applicant the opposite party inducted a fresh hand by name some Gujral in his place. He has also stated that he served a notice on the opposite party through his counsel.

6. Lastly it has been prayed that the action of the management is absolutely in contravention of the provisions of the Act, therefore, he is entitled to be reinstated in service with full back wages and all consequential benefits.

7. Opposite party has filed objection/written statement denying vehemently the allegations of the applicant. It has been alleged by the opposite party that he was not appointed by Army Air Borne Training School nor the said School is the employer of the applicant. He was engaged under the local management of the unit run canteen for operating electronic billing machine. The said unit is being run without any profit motto; therefore, the canteen does not fall under the definition of Industry.

8. It has specifically been denied that the claimant has raised any demand at any time and it is also stated that he was not removed from the service for any such alleged reasons as mentioned in paragraph 4 of the claim statement.

9. It has also been denied by the opposite party that they have ever breached the provisions of Industrial disputes Act, in the case of the applicant/workman.

10. Rejoinder statement has also been filed by the claimant but nothing new has been disclosed therein except reiterating the facts already pleaded in his statement of claim.

11. Heard and perused the record.

12. No party has led any oral evidence in support of their respective pleadings.

13. Claimant has filed three documents vide list No. 18/1. These documents are—Certificates paper No. 18/2-3, and a letter issued by Brigadier in respect of some order passed by the Hon'ble Apex Court.

14. Claimant has also filed copy of certain orders of the Central Administrative Tribunal and the Hon'ble Apex Court and Central Government Industrial Tribunal as mentioned in the application dated 11-09-2000.

15. It has been contended by the opposite party that burden to prove would lie on the workman that he had continuously worked for more than 240 days in a calendar year preceding the date of his termination, as well as that he has been terminated on 15-10-98 for the reason mentioned in Para 4 of the claim statement. But in the present case the workman did not appear and led any evidence on oath regarding continuity of service and his termination. This fact has been denied by the opposite party.

16. Even the certificates paper No.18/2-3 cannot be presumed to have been proved unless admitted by the opposite party or the claimant has proved those documents himself by appearing himself in the witness box before the tribunal. Therefore, no cognizance can be taken of these certificates ipso-facto.

17. Opposite party has placed reliance upon a decision 2008 (118) FLR 1164 Allahabad High Court, M/s. Uptron Power Tronics Employees Union, Ghaziabad through its Secretary versus P.O. Ghaziabad Labour Court. The Hon'ble Court propounded that in the absence of any evidence led by or on behalf of the workman reference is bound to be answered by the court against the workman.

18. Therefore, in view of foregoing discussions it is concluded that the workman has palpably failed to establish his case before the tribunal by adducing acceptable evidence.

19. Consequently the reference is bound to be decided in favour of the management and against the workman.

20. Accordingly reference is answered against the applicant/workman holding that he is not entitled to get any relief pursuance to the present reference order.

21. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ. 3021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी डायरेक्टर, जवाहर नवोदय विद्यालय समिति एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 80/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2012 को प्राप्त हुआ था।

[सं. एल-42012/09/2006-आईआर(डी.यू.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 3rd September, 2012

S.O. 3021.—In pursuance of Section 17 of the Industial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Deputy Director, Jawahar Navoday Vidyalaya Samiti and others and their workman, which was received by the Central Government on 03-09-2012.

[No. L-42012/09/2006-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer Sh. N.K.Purohit

I.D. 80/2006

Reference No.L-42012/9/2006-IR (DU) dated: 11-7-2006

Sh. Pratap Singh
S/o Sh. Jaswant Singh Jat
Vill: Sunari, P.O.- Avaar Via Paigore,
Teh: Kumher, Dist.: Bharatpur (Raj.)

V/s

1. The Deputy Director
Jawahar Navoday Vidyalaya Samiti
Regional Office-A-12, Shastri Nagar,
Near Pital Factory, Jaipur- 302016.

2. The Principal
Jawahar Navodaya Vidyalaya,
Jat Baroda, Gangapur City,
Sawai Madhopur (Rajasthan)- 322201.

Present :

For the Applicant : Shri K.S. Rathore.

For the Non-applicant : Shri V.S. Gurjar.

AWARD

20-7-2012

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 and 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

> "Whether the action of the Principal, Navodaya Vidalaya Samiti, Jat Baroda, Tehsil Gangapur, Distt: Sawaimadhopur, in terminating the services of Shri Pratap Singh S/o Shri Jaswant Singh Jat from 1-9-2005 is just and legal? If not, what relief the workman is entitled for ?"

2. The workman in his claim statement has pleaded inter-alia that he was employed as driver against a regular post of driver by the management of the non-applicant on 9-10-01, whose service was terminated on 13-12-02. He had raised an industrial dispute and the dispute was referred to the CGIT, Jaipur, which vide its award dated 20-1-05 directed his reinstatement in service and he was consequently taken back on duty by the management on 17-5-05. His reinstatement irked the management and he was terminated on 1-9-05. He, therefore, raised an industrial dispute before the Conciliation Officer who submitted a failure report to the Central Government which has referred this industrial dispute to the CGIT for adjudication.

3. The workman has further pleaded that a permanent post of driver was lying vacant despite this his services were terminated; that no seniority list was prepared; that notice pay and compensation was not paid on the basis of minimum wages as per Government of India circular dated 1-4-05. Further the amount of notice pay & compensation was not paid to him on the date of his termination. He has alleged that the management has adopted unfair labour practice & has acted in violation of the mandatory provisions of Section 25-F of the I.D.Act. He has also alleged that juniors to him have been retained in the job in violation of Section 25-G of the I.D.Act.

4. The non-applicants in their written counter has disputed the claim of the workman. It has been contended that no, appointment letter was ever given to the workman. He was reinstated in compliance of the award dated 20-1-05 (Ex.M-1). Thereafter, the workman filed an application u/s 33-C(2) of the I.D. Act (Ex.M-2) for his wages for the period 20-1-05 to 16-5-05. The non-applicant raised preliminary objections vide reply dated 13-9-05 (Ex.M-3). It has further been pleaded that during pendency of earlier proceedings in CGIT case No. 46/04, Navodaya Vidyalaya Samiti provided a regular driver to the non-applicant JNV, Jat Baroda. The workman was offered other available job but he declined to do any other work, therefore, the services of the workman as daily wager driver were terminated. The non-applicant has also pleaded that merely on the basis of 240 working days; the workman cannot be given regular appointment on the post of driver. The workman was reinstated as daily wager driver vide award dated 17-5-05, therefore, after availability of the regular deriver the termination of the workman after complying with the provisions of Section 25-F was valid. It has been denied that management of the non-applicant has adopted any unfair labour practice. It has been pleaded that non-applicant establishment is not an 'industry' u/s 2(j) of the I.D. Act.

5. In rejoinder, the workman further pleaded that an amount of Rs. 80 for clearance charges has been deducted by the bank from the amount of retrenchment compensation given to him by cheque. Apart that the amount of notice pay and, compensation has not been computed in accordance with minimum wages payable as per Govt. of India circular. Thus, lesser amount of retrenchment compensation has been paid to him. The workman has also pleaded that Sh. Joginder Singh and others who were junior to him were retained at the time of his termination and in other districts new persons were employed without any offer of re-employment to the workman.

6. On the pleadings of both the parties following points emerge for consideration:—

(i) Whether the workman has completed more than 240 days of actual work with the non-applicant during preceding twelve months from the date of his termination on 1-9-05 ?

(ii) Whether notice pay & retrenchment compensation were not paid to the workman in accordance with the clause (a) and (b) of Section 25-F of the I.D.Act and his service was terminated in violation of the said provisions ?

(iii) Whether juniors to the workman were retained in the job at the time of termination of the workman in

violation of Section 25-G of the I.D.Act ?

(iv) Whether fresh hands were employed after termination of the workman without any offer of re-employment to the workman in violation of Section 25-H of the I.D. Act ?

(v) Whether the non-applicant establishment is not an 'industry' as defined u/s 2(j) of the I.D.Act ?

(vi) Whether the workman is entitled to any relief ?

7. In evidence, the workman has submitted his affidavit whereas the management has filed counter affidavit of Sh. H.K. Khandwal, principal, JNV, Jat Baroda. In documentary evidence the workman & the management have filed documents Ex. W-1 to Ex.W-4 and Ex.M-1 to Ex.M-7 respectively.

8. I have heard both the parties and have scanned the record.

9. The point wise discussion follows as under:—

Point No.I

10. The workman has deposed that he had worked for more than 240 days during a calendar year. There is no cross- examination on this point. The management witness Shri H.K. Khandwal in his affidavit has not denied this fact. In this regard he has only stated that merely on the basis of 240 working days a daily wager cannot be given regular appointment. Apart that award dated 20-1-05 passed in case No. 46/04, it has been held that the workman is entitled to be reinstated in the service as a bus driver on daily wages basis with continuity of his service and in compliance of the said award the workman was taken back on duty on 17-5-05. Thereafter, his services were terminated on 1-9-05 vide impugned order dated 1-9-05 (Ex.W-3). Further, the retrenchment order itself reveals that considering the continuous one year service retrenchment compensation was paid to him. Thus, it is evident from the above facts that the workman had worked for more than 240 days during preceding 12 months from the date of his termination and provisions of Section 25-F are attracted. Accordingly, this point is decided in favour of the workman.

Point No. II

11. Section 25-F, clause (a) lays down that no workman shall be retrenched until one month notice in writing indicating the reason for retrenchment & the period of retrenchment is expired or the workman has been paid in lieu of such notice wages for the period of the notice. Its clause(b) says that the employer is required to pay compensation equivalent to 15 day's average pay for every completed year of continuous service or any part thereof in excess of six months.

12. The question calls for consideration is whether the management has complied with the above mandatory requirements.

13. The learned representative for the workman contends that amount of notice pay and compensation was not paid to the workman on the date of termination. The termination order was also not served upon the workman on the date of termination. Further, the amount of Rs. 80 was deducted by the bank for clearance charges from the amount of cheque given as retrenchment compensation. He also contends that in accordance with minimum wages the compensation has not been given to the workman. The management of the school has not complied with the conditions precedent for a valid retrenchment u/s 25-F of the I.D. Act. In support of his contentions he relied on 1984 RLR 981 & 2006 LAB IC 34 (Raj.).

14. Per contra, the learned representative for the management submits that sufficient retrenchment compensation and notice pay were paid to the workman as per requirement of Section 25-F of the I.D.Act and payment was made through cheque dated 1-9-05 which was sent by registered post. He further submitted that the amount of retrenchment compensation was computed on the basis of wages payable to the workman at the time of his retrenchment.

15. I have given my thoughtful consideration to the rival submission of both the parties.

16. Admittedly, one month notice was not given and , the workman has been paid an amount of Rs.2100 as one month's pay in lieu of notice and , an amount of Rs.4847 has been paid on account of compensation. Upon perusal of the retrenchment order dated 1-9-05 (Ex.W-3), it reveals that a cheque No.524703 dated 1-9-05 of an amount of Rs.6947 has been drawn on the bank of PNB and was enclosed with the retrenchment order. It further reveals that the said impugned order dated 1-9-05 was sent by the registered post. It also reveals that in the impugned order dated 1-9-05 (Ex.3) it has been mentioned that "cheques has been drawn on the bank of PNB which he may collect from the office of the Vidyalay in any of the working days in working hours..... on receipt thereof."

17. The management has not produced any receipt of the retrenchment order. The workman in his cross-examination has admitted that impugned order (Ex.W-3) was received by post. He has also admitted that the cheque was received by him. But it is evident from the said impugned order that the order as well as the cheque enclosed with it were not given to the workman on the date of termination i.e. 1-9-05. If cheque was to be collected by the workman from the Vidyalay after receipt of the retrenchment order or cheque was to be delivered to the workman by registered post, in both situation obviously, the notice pay and compensation was to be paid to the workman after the date of retrenchment i.e. 1-9-05. Apart that retrenchment order was not served upon the workman on the said date of termination.

18. In 1984 RLR 981 referred to by the learned representative for the workman while passing the order of retrenchment, few workmen who were entitled to receive payment simultaneously at the time of retrenchment could not receive the payment on the same day. The finding of the tribunal that the employer had not paid the dues payable to such workmen U/s 25-F, clauses (a) & (b) of the Act at the time of retrenchment was considered to be just & upheld by the Hon'ble court.

19. In 2006 LAB IC 34 (Raj.), services of the workman were retrenched on 31-12-86 & compensation as required by Section 25- F was sent to the workman's house on 6-1-87, Hon'ble court held that the compensation was not paid to the workman at the time of retrenchment but was sent later on, which is against the mandatory provision of Section 25-F of the I.D. Act.

20. In present case, the termination order as well as cheque of retrenchment compensation was not actually tendered to the workman on the date of termination i.e. 1-9-05. Sending termination order along with cheque of retrenchment compensation by post was not a genuine offer on the date of termination. Thus, the submission made on behalf of the workman that amount of retrenchment compensation by cheque was not paid simultaneously on the date of retrenchment finds support from the decisions supra.

21. Further, the workman has deposed that an amount of Rs.80 was deducted from the amount of cheque as its clearance charges. In this regard, the workman has produced copy of his passbook (Ex-w-4). Upon perusal of the above copy of the passbook it reveals that the amount of retrenchment compensation Rs. 6947 was deposited in the account on 22-9-05 and on the said date an amount of Rs.80 was deducted from the said account as its clearance charges. The management witness Sh. H. K. Khandwal has admitted the above facts. Thus, the contention of the learned representative for the workman that said deduction converts it into the inadequate compensation amount has substance in it.

22. For the above reasons, the lesser payment of compensation as well as payment or tender of compensation to the workman after retrenchment has taken effect on 1-9-05 has vitiated the retrenchment & non-compliance with the mandatory provisions has resulted in nullifying the retrenchment.

23. It has been contended by the learned representative on behalf of the workman that compensation was not computed in accordance with the minimum wages, therefore, lesser amount of compensation was paid to the workman.

24. Clause (b) of section 25-F only envisages that 15 days average pay for every completed years of continuous service is to be paid while computing the retrenchment compensation & as per definition of the average pay U/s 2(aaa) average of the wages payable to a workman preceding the date on which the average pay becomes payable is to be considered. Average Pay was to be calculated on the basis of amount which was being paid at the time of termination on 1-9-05. It is not the case of the workman that at the time of termination on the said date, he was getting @ Rs.195 per day as daily wages. It is not within the scope of the reference to consider what wages ought to be paid to the workman before his termination on 1-9-05 thus, the contention on behalf of the workman that retrenchment compensation should have been computed on the rate of @195 as fixed by the Government of India or as per the rate of minimum wages as fixed by the State Government is not acceptable.

25. In view of above discussions it is concluded that while terminating the services of the workman clause (a) & (b) of the 25-F of the I.D. Act have not been complied with strictly. Therefore, this point is decided in favour of the workman.

Point No. III

26. The workman in his affidavit has deposed that Sh. Jogender Singh who was junior to him was retained in the job at the time of his termination. But in cross examination he has admitted that Sh. Jogender Singh was employed as driver. He has further stated that he was employed after his termination. The case of the management is that Sh. Jogender Singh driver was provided by the Navoday Vidyalay Samiti after earlier termination of the workman on 14-12-02 & before the workman was reinstated on 17-5-05 in compliance of the award, the services of the workman were terminated on 1-9-05 on the ground that regular driver was made available to the Vidyalay on transfer made by the competent authority. It is not the case of the workman that Sh. Jogender Singh was working as daily wager driver & he was employed after his reinstatement on 17-5-05, therefore, provision of section 25-G are not attracted & this point is decided against the workman.

Point No. IV

27. The workman has neither disclosed in his claim statement nor in his affidavit the names of those persons who were said to be given employment after the termination of the services of the workman. The workman has admitted in his cross examination that he has not produced any evidence to substantiate his statement in this regard. Thus, he has failed to bring on record any evidence on this point, which is decided against him.

Point No.V

28. The learned representative for the non-applicant school contends that the organization does not fall within the definition of Section 2-J of the Act and that school being an educational institution is not commercial establishment and in support of his contention he has relied upon RLW 2002(1) 66(Raj.) & 1978 LLJ 349 (SC). In RLW

2002(1) 66(Raj.), it was considered whether 'School' was an industry within the meaning of Section 2- J of the Act and after taking notice of the decisions 1999 LAB IC 97 & 1998 (4) SCC 42, it was decided that the 'school' is an industry within the meaning of 2-J of the Act. In Banglore Water Supply case reported in 1978 LLJ 349 (SC) the Hon'ble Apex Court has observed and concluded that an educational institution is an industry in accordance with the parameters laid down by the Court. The relevant observation is usefully quoted as below:—

> "The final ground accepted by the Court is that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is spiritually still-born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission even if true is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion."

29. The observation made by the Hon'ble Apex lends support to the submission advanced on behalf of the workman and it is held that the non-applicant institution is an industry as defined under section 2-J of the Act. This point, therefore, is decided in favour of the workman.

Point No.VI

30. On account of the decision of Point no.I to II in favour of the workman, it is concluded that the action of the non-applicant in terminating the services of the workman from 1-9-05 is not justified & legal.

31. This legal position is not in dispute that in case of non compliance of Section 25-F the workman can be reinstated with other consequential reliefs.

32. Earlier in cases of termination in violation of Section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

33. In decision reported in (2010) 1 SCC (L&S) 545 Jagbir Singh V/s Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of Section 25-F of the I.D. Act Hon'ble Apex Court has observed that:—

> "It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee."

34. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under:—

> "While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation."
>
> "There has been a shift in the legal position laid down by the Supreme Court and now there is no hard- and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

35. In recent decision referred to on behalf of the workman reported in 2012 (2) WLC Raj. 642, Hon'ble High Court after considering catena of decision of Hon'ble Apex Court in recent time held that if a person has been appointed on daily rated basis the order of reinstatement cannot be automatic & awarded compensation to the workman having regard to his status & period of service.

36. In present matter, the workman was reinstated vide award dated 20-1-05 as daily wager driver. He was not holding any regular post. Further his services were terminated on the ground that regular driver was made available by transfer. Keeping in view the nature of job & nature of employment, the laps of time after termination of the services & having regard the entire facts &

circumstances of the case, instead of reinstating him the interest of justice will be sub served by paying compensation to the workman instead & in lieu of relief of reinstatement in service.

37. Accordingly, the reference is answered in affirmative in favour of the workman & it is held that the action of the management in termination of the services of the workman being in violation of clauses (a) & (b) of the Section 25-F of the Act is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman worth Rs.35000 (Thirty Five Thousand Only) instead & in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 9% per annum.

38. Award as above.

39. Let a copy of the award be sent to Central Government for publication U/s 17(1) of the I.D.Act.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ. 3022.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल, जवाहर नवोदय विद्यालय, टोंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 88/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2012 को प्राप्त हुआ था।

[सं. एल-42012/56/2006-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 3rd September, 2012

S.O. 3022.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. case no. 88/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The Principal, Jawahar Navoday Vidyalaya, Tonk and their workman, which was received by the Central Government on 03-09-2012

[No. L-42012/56/2006-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer : Sh. N.K.Purohit

I.D.88/2006

Reference No.L-42012/56/2006-IR(DU) dated: 8-11-2006

Smt. Jetu Bai
W/o Shri Prahlad Gurjar
P.O. Chhan, Tonk (Rajasthan)

V/s

The Principal,
Jawahar Navodaya Vidyalaya
Village & P.O. : Chhan
Distt : Tonk (Rajasthan).

Present :

For the Applicant : Shri B.M.Bagda
For the Non-applicant : Shri V.S.Gurjar

AWARD

23-7-2012

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section (1) and 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication :—

> "Whether the action of the management of Principal, Jawahar Navodaya Vidyalaya, Distt. Tonk in terminating the services of their workman Smt. Jetu Bai W/o Shri Prahlad Gurjar w.e.f. 9-2-2006 is legal and justified? If not, to what relief the work person is entitled to?"

2. The workman in her claim statement has pleaded that she was working as Mess-Helper against a regular post. Despite she had worked for more than 240 days in each calendar year, her services were terminated on 9-2-06 without any notice or compensation in lieu of notice. The workman has alleged that no seniority list was prepared at the time of termination of her services & juniors to her were retained in the job. Thus, the management of the school has violated the provisions of Section 25-F & G of the I.D. Act. The workman has prayed to reinstate her with all consequential benefits.

3. The management of the school in its reply has denied the claim of the workman. It has been contended that no regular post of helper was lying vacant since April, 2002. The workman was engaged as daily wager on the basis of availability of the work. Her employment was for a fixed amount & for a fixed period only. It has been denied that the service of the workman was terminated on 9-2-06. The management has contended that the workman had remained absent following altercation with a daily wager Smt. Munni Bai, therefore, provisions of Sections 25-F, G & H are not attracted in the present matter.

4. In claim statement no date of appointment has been mentioned. But in rejoinder, she has pleaded that she was engaged on 1-7-2000 and had worked continuously during period 1-7-2000 to 8-2-2006.

5. In evidence, the workman submitted her affidavit and documents Ex.W-1 & W-2, whereas the management of the school filed counter affidavit of Shri Sudhir Chandra Dhayani, Principal, JNV, Tonk and documents Ex-M-1 & M-2.

6. Heard learned representative on behalf of both the parties & perused the relevant record.

7. In view of the pleadings of both the sides the following points emerge for considerations:—

(i) Whether the workman has worked as mess-helper during period 1-7-2000 to 8-2-2006 and whose services have been terminated by the non-applicant on 9-2-2006 in violation of Section 25-F of the I.D. Act ?

(ii) Whether junior to the workman were retained while terminating the services of the workman in violation of Section 25-G of the I.D. Act ?

(iii) Whether after terminating the services of the workman fresh hands were recruited by the non-applicant in violation of Section 25-H of the I.D. Act ?

(iv) To what relief the workman is entitled to ?

Point no. 1

8. Learned representative for the workman has submitted that the workman has proved her case set forth in her claim statement by submitting her affidavit. She has discharged her initial burden. The management has admitted in its reply that workman was working as mess helper up to 9-2-06. The management has not produced any document to show that workman had not worked for more than 240 days during calendar year as claimed by her. The documents were in power & possession of the management & the same have not been produced therefore, adverse inference should be drawn against the management. In support of his contentions he relied on JT 2010(2) SC 599, 2010 LLJ 3 (SC) 3, 2008 LAB IC 3894 (SC), 2012 (2) WLC 642 (Raj.)

9. Per contra, the learned representative for the management submitted that the burden to prove her case was on the workman. She had not adduced any documentary evidence to substantiate her statement. Mere affidavit in support of her case is not sufficient for proving her case in view of the decision of Hon'ble Apex Court reported in 2002 (3) SCC 25. He further submitted that the workman has not disclosed the names of the junior persons said to be retained by the management. She has also not disclosed the names of the person said to be given recruitment as mess-helper after termination of her services. He submitted that the workman is a quarrelsome lady and she herself had left the service after she had quarreled with a daily wager. Therefore, provisions of Section 25-F, G & H are not applicable and her claim be rejected.

10. I have given my thoughtful consideration to the rival submissions of learned representatives of both the parties and have gone through the decisions referred to by them.

11. To attract the provisions of Section 25-F of I.D. Act one of the conditions required is that the workman is employed in any industry for a continuous period which would not be less than one year.

12. The expression "continuous period" occur in Section 25-F has been defined in Section 25-B of the I.D. Act. Under Sub-section (1) of the Section 25(B), if a workman has put in uninterrupted service of establishment including the service which may interrupted on account of sickness, authorize leave, accident, a strike which is not illegal, a lock out or secession of work that is not due to any fault on the part of the workman shall be said to be in continuous service for one year i.e. 12 months in respect of number of days he has actually worked with interrupted service permissible under Sub-section (1) of Section 25(B).

13. Sub-section (2) of Section 25(B) of the I.D. Act says that even if a workman has not been in continuous service for a period of one year as envisaged under Sub-section (1) of 25(B) of I.D.Act, he shall be deemed to have been in such continuous service for a period of one year if he has actually worked under the employer for 240 days in preceding period of twelve months from the date of his termination. The said Sub-section provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year.

14. In the background of the legal provisions set out above, factual scenario in the present case is to be examined.

15. The initial burden was on the workman to prove that she had remained under the employment of the non-applicant as a workman for a continuous period of at least one year as envisaged u/ s 25-F of the I.D. Act therefore, her termination without notice or compensation in lieu of notice was in violation of the said section.

16. The workman in her affidavit has deposed that she was working as mess-helper and she had worked continuously during period 1-7-2000 to 8-2-06 but in cross-examination she has admitted that in the month of June, the school used to remain closed. She has also admitted that she did not work during months May and June. Thus, admittedly during said period her services were not uninterrupted service as envisaged in sub-clause (1) of Section 25-B of the I.D. Act.

17. Thus, the scope of enquiry is now confined to only 12 months preceding the date of termination to consider the question whether the case of the workman falls under sub-section 2 of section 25-B and attract the provisions U/s 25-F of the I.D. Act.

18. The workman has stated that she had worked for more than 240 days in a calendar year. There is no cross-examination on this point. Further, the management witness Sh. Sudhir Chandra Dhayani has admitted that as per record the workman was working in the mess of the school & an amount of Rs.900 to Rs.1100 was used to be paid to her. He has stated that the workman did not work for more than 240 days during preceding 12 months from the date of alleged termination. But he has not stated the actual working days of the workman during said period. He has admitted that the food in the mess was used to be served on holidays also. He has also admitted that as regards actual working days he did not see attendance register or payment register in this regard. He was not having personal knowledge regarding actual working days of the workman. He has not stated categorically that such record is not available in the school. The management witness has stated that the workman had left the job on 9-2-06. Thus, he has admitted this fact that the workman was in service till 9-2-06. Under these circumstances, the statement of the workman that she had worked for more than 240 days before termination of her service on 9-2-06 cannot be disbelieved.

19. The learned representative on behalf of the management has referred 2002(2) SCC 25 in support of his contention that filing of an affidavit is only her own statement in his favour and that cannot be regarded as sufficient evidence. But the facts of the above case are distinguishable.

20. In decision 2010 LLJ 3(SC) Hon'ble Apex Court has held that burden of proving 240 days of service is initially on the workman and its shifts to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service when the workman has deposed that he had worked for more than 240 days.

21. In view of the above legal proposition, the management has failed to discharge burden which was shifted to management after deposition of the workman that the workman did not complete 240 days of service in requisite period.

22. The workman has alleged that her services were terminated whereas the management's stand is that the workman had left the job on her own following quarrel with a co-worker. In cross-examination she has emphatically denied the suggestion put to her on behalf of the management that she had left the job w.e.f. 9-2-06.

23. The workman had produced copy of a letter dated 20-4-06 addressed to the Principal, JNV wherein she made request for her reinstatement in the service. She has also produce a copy of a letter dated 12-2-06 addressed to the Collector wherein she made a request to reinstate her, since the principal did not reinstate her. Although, the workman in her cross-examination has stated that there is thumb impression on the letter Ex-1 whereas she used to sign but the management witness has not categorically denied that above letters were not received by the addressee. The workman had raised dispute before R.L.C., Kota immediately after her termination from service on 9-2-06. Had she really intended to left the job she would not have raised the dispute before the R.L.C.(C), Kota. Circumstances indicate that the workman had no intention to relinquish the job. It was for the management to prove by adducing reliable evidence that the workman had left the job on her own which it has failed to establish.

24. In view of above discussion, it is concluded that workman had worked for more than 240 days during preceding 12 months from the date of his termination i.e. 9-2-06. The management witness has admitted this fact that no notice or compensation in lieu of notice was given to the workman U/s 25-F of the I.D. Act. Thus, the termination of the workman was in violation of the said section.

Point Nos. II & III

25. So far as violation of Section 25-G & H is concerned the workman in her affidavit has not deposed that any junior to her was retained at the time of her termination. She has also not deposed that after her termination fresh persons were given recruitment as mess-helper without any offer of re-employment to her. First time she stated in her cross-examination that after her termination, two workmen have been employed for the job of helper but she has not disclosed their names. Apart from this, there is no such pleading. Thus, the workman has also failed to establish any violation of Section 25-G and H of the I.D. Act.

Point No. IV

26. On account of decision on point no.1 in favour of the workman it is concluded that the action of the non-applicant in terminating the services of the workman from 9-2-06 is not justified & legal.

27. The workman has prayed that she should be reinstated in service with full back wages.

28. This legal position is not in dispute that in case of non-compliance of Section 25-F the workman can be reinstated with other consequential reliefs.

29. Earlier in cases of termination in violation of section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

30. In decision, reported in (2010) I SCC (L&S) 545 Jagbir Singh V/s Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of Section 25-F of the I.D.Act Hon'ble Apex Court has observed that :—

> "It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

31. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under :—

> "While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation."
>
> "There has been a shift in the legal position laid down by the Supreme Court and now there is no hard- and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

32. In present matter, the workman has worked as daily wager mess-helper. She was not holding any regular post and she was working as daily wager. Keeping in view the nature of job, nature of employment, the laps of time after termination of the services, the total length of service rendered by the claimant and having regard the entire facts and circumstances of the case, instead of reinstating him the interest of justice will be sub served by paying compensation to the workman instead & in lieu of relief of reinstatement in service.

33. Accordingly, the reference is answered in affirmative in favour of the workman and it is held that the action of the management in termination of the services of the workman being in violation of Section 25-F of the Act is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman worth Rs. 30,000 (Rs. Thirty Thousand Only) instead and in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 9% per annum.

34. Award as above.

35. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D. Act.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ.3023.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चैयरमैन-कम मैनेजिंग डारेक्टर, मैसर्स मद्रास फरटीलाईजर लि., चैन्नई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ संख्या 51/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-9-2012 को प्राप्त हुआ था।

[सं॰ एल-42011/211/2011-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 3rd September, 2012

S.O. 3023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between the Chairman-cum-Managing Director, M/s. Madras Fertilizers Limited, Chennai and their workman, which was received by the Central Government on 3-09-2012.

[No. L-42011/211/2011-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 51/2012

Shri N. Arjun & Others through
The General Secretary,
Madras Fertilizers Staff Union,
No. 5, Vasundevan Street, Kilpauk,
Chennai-600 068 ...Workmen

Versus

The Chairman-cum-Managing Director,
M/s. Madras Fertilizers Limited,
Manali,
Chennai-600 068 ...Management

AWARD

Shri N. Arjun was employed as labour on 01.10.1974 by M/s Madras Fertilizers Ltd. (in short the management). He got promotions as Tool Crib Attendant, Technical Assistant (Maintenance) and Senior Technical Assistant. He was transferred to Materials Management (Store) and thereafter promoted as Senior Officer (Store). Shri T.N. Balakrishnan joined the management as Technical Trainee. He was promoted as Senior Materials Handling Assistant. He was transferred to Materials Management (Store) and promoted as Senior Officer (Store). Their transfer orders to Materials Management (Store) and promotion as Senior Officer (Stores) were perceived by the Madras Fertilizers Staff Union (in short the Union) as acts of favoritism to them. A demand was raised by the Union calling upon the management to revert them to their original positions of Senior Technical Assistant and Senior Material Handling Assistant respectively and to cancel their transfer orders. Since the demand was not acceded to, an industrial dispute was raised by the Union before the Conciliation Officer. The management resisted their claim, which act resulted into failure of conciliation proceedings. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42011/211/2011-IR(DU), New Delhi dated 24-02-2012, with the following terms:

> "Whether the action of the management of Madras Fertilizers Ltd., Chennai in promoting Shri N. Arjun and Shri T.N. Balakrishnan and their transfer to Materials Management (Store) is legal and justified? To what relief the union is entitled to ?"

2. While making reference of the dispute to this Tribunal, the appropriate Government directed the parties raising the dispute to file statement of claim, along with relevant documents, list of reliance and witness with this Tribunal within 15 days of the receipt of the reference order and to forward a copy of such statement to each of the opposite parties involved in the dispute. Despite directions given, the Union opted not to file its claim statement before this Tribunal.

3. Notice was sent to the Union through registered post on 19-03-2012 calling upon it to put in its appearance before this Tribunal on 09-04-2012 and to submit its statement of claim alongwith other documents in its possession, which are related to the matter in an way for adjudication. The notice was served on the Union. Instead of putting appearance and filing its claim statement, the General Secretary of the Union wrote a letter to this Tribunal informing that the management had not approved travel expenses of the office bearers and their authorized representative to reach Delhi for attending the hearing of the dispute. It was claimed therein that the Union was not in a position to bear the expenses and a request was made to the effect that directions be issued to the management to sanction travel expenses for two office bearers of the Union by AC 2 tier and of their authorized representative by air, so that they may attend the Tribunal.

4. Industrial Disputes (Central) Rules 1957 (in short the Rules) provide procedure for adjudication of disputes referred to Labour Court, Tribunal or National Tribunal. Rule 10 B details the procedure as to how claim statement, written statement, rejoinder and documents are to be filed by the parties to the dispute. It has further been detailed therein as to how many adjournments are to be granted for production of evidence by the parties. In case of any party making default in putting its appearance before the Tribunal, it may proceed with the reference *ex-parte* and decide it in the absence of the defaulting party. It has nowhere been mentioned therein that the party may seek its traveling expenses from its opponents.

5. Rule 33 of the Rules contemplates that any person, who is summoned to attend the Tribunal as witness, shall be entitled to an allowance for expenses according to the scale for time being in force with respect to witnesses in Civil Courts in the State where investigation, enquiry, adjudication or arbitration is being conducted. The Union was called upon to submit its claim statement alongwith documents in the capacity of a party raising the dispute. Status of a witness was not clothed on the Union, to whom expenses are to be paid for its appearance before the Tribunal. In view of these facts, no cognizance of the application, sent by the Union, was taken.

6. Though the Union was served with the notice sent by the Tribunal, yet notices were sent by registered post on 11-04-2012, 04-05-2012, 06-06-2012 and 03-07-2012 calling upon it to file its claim statement on 02-05-2012, 04-06-2012, 29-06-2012 and 01-08-2012 respectively. These notices were not returned back by the postal authorities, except the notice sent on 11-04-2012. The said notice was returned with the remarks "left". As referred above, notice sent for appearance on 09-04-2012 was served on the Union at the very address where this notice was sent. It seems that the above report was manipulated with ulterior motive. Even otherwise, notices sent for other dates were neither returned by the postal authorities nor anyone appeared on behalf of the

Union. Every presumption lies in favour of the fact that postal authorities have regularly performed their duties and delivered postal articles to the General Secretary of the Union, which were addressed to him by the Tribunal. Thus, it emerges that despite various notices sent and served on the Union, it opted not to file its claim statement.

7. Management was called upon to file its written statement, which direction was complied with. In its written statement, the management pleads that in the year 2006, non-supervisory promotion policy was finalized by way of negotiated settlement with the Union. The policy so formulated was effective from 01-04-2004. Though validity of the policy was for a period of four years, yet it is to remain in vogue till finalization of the new policy. Since new policy has not been finalized, the above policy is in force.

8. Management further pleads that Shri N. Arjun joined as labour on 01.10.1974. His qualification as the time of joining service was matriculation. He was promoted as Tool Crib Attendant on 01.08.1979. He was further promoted as Technical Assistant (Maintenance) on 01.04.1995. He was upgraded as Senior Technical Assistant (Grade V position) on 01.05.1996. He was transferred to Materials Management (Store) on 13.08.2010. He was promoted as Senior Officer (Store) on 08.03.2011. Shri N. Arjun has superannuated on 31.03.2011. Shri N. Arjun served in Grade V position from 01.05.1996 and thus rendered almost 15 years of service in that grade, without any growth. Non-supervisory promotion policy provides for promotion of stagnated employee in Grade V position with basic threshold qualification but could not be promoted to E1 position for want of professional qualification on completion of 13 years service in Grade V position. Since Shri N. Arjun had completed 15 years service without any growth in his career, he represented to the management for his promotion under stagnation promotion. His case was sympathetically considered. Taking in to consideration that his promotion may not adversely affect growth of any other employee, he was transferred to Materials Management (Store) and promoted on 08.03.2011. In Materials Management (Store) his qualification was considered threshold qualification for E1 grade on stagnation promotion. His promotion has not blocked growth of any other employee in the department in particular or establishment as a whole.

9. Shri T.N. Balakrishnan joined as B&S Technician on 04.10.1976, projects the management. He was absorbed on that position on 01.08.1977. His qualification at that time was matriculation. He was promoted as Senior Materials Handling Assistant (Grade V position) on 16.01.1991. He acquired higher qualification, viz. M.A. (History) during the year 1995. He was transferred to Materials Management (Store) on 13.08.2010. He rendered almost 20 year service on the same position without any growth. When he represented for his promotion under stagnation promotion, his case was sympathetically considered. He was promoted under Clause 9.01 of Non-supervisory promotion policy. His qualification was considered as threshold qualification for E1 scale on promotion. He is due to retire on 30.06.2013. His transfer and promotion has not blocked growth of any other employee in the department in particular or establishment as a whole. The transfer and promotion of the aforesaid employees are neither in violation of the promotion policy nor it affected growth of any other employee.

10. Certified standing orders are applicable to the management. Clause 7 of the certified standing order contemplates that the workman shall be liable to be transferred to a department or section of the Company or to any other place of business of the Company. In case of refusal, such workman shall be considered as absent from duty for the period of such refusal and corresponding deductions will be made from his wages in accordance with the provisions of the Payment of Wages Act. Such workmen shall also be liable to disciplinary action under the standing order, presents the management. Thus, it is emerging over record that the management has a right to transfer its employees to any department or section, with a view to effectively utilize its work force. It is also emerging over record that transfer of Shri N. Arjun and Shri T.N. Balakrishnan were effected under administrative exigency. No eyebrow can be raised against their transfer or promotion, since growth of any other employee has not been adversely affected.

11. Facts detailed above, make it clear that transfer orders of the aforesaid employees were made in consonance with administrative exigencies. No mala fide, victimization, or unfair labour practice on the part of the management has been brought over record. It cannot be said by any stretch of imagination, that transfer orders of the aforesaid employees were colourable. No question mark could be raised on their transfer, for want of material over record. When promotions of the aforesaid employees do not adversely affect growth of anyone in Materials Management (Store) department or the establishment of the management as a whole, I find the action of the management legal as well as justified. The Union is not entitled to any relief in that regard. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 01.08.2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ.3024.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, भारत संचार निगम लि., लातूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार ओद्यौगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या सी.जी. आई.टी./एन.जी.पी./04/2008) को प्रकाशित करती है केन्द्रीय सरकार को 03-9-2012 को प्राप्त हुआ था।

[सं. एल-40011/47/2007-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 3rd September, 2012

S.O. 3024 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/04/2008) of the Central Government Industrial Tribunal-cum- Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between The General Manager, Bharat Sanchar Nigam Limited, Latur and their workman, which was received by the Central Government on 03.09.2012.

[No. L-40011/47/2007-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/04/2008 Date: 10.08.2012

Party No.1 : The General Manager,
Bharat Sanchar Nigam Ltd.,
Latur,
Maharashtra.

Versus

Party No. 2 : Shri Kundlik Shekba Kamble,
At & Post: Aurad, Sahajani, Teh. Nilanga,
Latur, (Maharashtra)

AWARD

(Dated: 10th August, 2012)

In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of B.S.N.L. and their workman, Shri Kundlik Kamble, for adjudication, as per letter No.L-40011/47/2007-IR (DU) dated 31.01.2008, with the following schedule:-

> "Whether the action of the management of Bharat Sanchar Nigam Limited, Latur in terminating the services of their workman shri Kundlik S. Kamble w.e.f. 01.08.2006 is legal & justified? If not, to what relief the Workman is entitled ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and Accordingly, the workman, Shri Kundlik Kamble, ("the workman" in short), filed the statement of claim and the management of B.S.N.L., ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was working as a part time sweeper in the office of the Telephone Exchange, Aurad Sahajani from the year 1980 continuously without any break in service and on 01-08-2006, after completion of the day's work, the Sub-divisional Engineer orally terminated his services saying that his services not to be required anymore and he had worked with party no.1 for more than 240 days in every calendar year from 1980-81 to 2005-2006 and party no.1 terminated his services without any reason and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was paid to him before termination of his services and salary for the month of July, 2006 was also not paid to him and Bharat Sanchar Nigam Limited came into existence w.e.f. 01-10-2002 and prior to that the management was totally under the control of the Government of India, Telecom Department and he was initially working with the Telecom Department and wages was being paid to him sometimes by money order and at times on ACG-17 voucher by the party no. 1. The further case of the workman is that he was doing the work of sweeping the office, cleaning the machines and also the duty of night watchman and other works as ordered by the officers of the Exchange and on 20-08-2001, he made representation to party no.1 to absorb him as a permanent employee, but party no.1 did not take proper action in the matter, so on 01-03-2003, he again made a representation and the higher authority of party no.1 called for a detailed report about him from the subordinate officers vide letter dated 25-03-2003 and he also made several representations in writing and so also orally, requesting to increase his monthly wages, but party no.1 did not take proper action in the matter and the Sub-Divisional Engineer, Aurad Sahajani and Sub-Divisional Engineer, Nilanga verified his documents and working days and submitted their report on 31-03-2003 to the party no. 1. It is also pleaded by the workman that his application dated 20-08-2001 for appointment as a regular Mazdoor was as per the notification published on 07-08-2001 in the daily newspaper, "Lokmat" and his said application contained the details regarding the working days and other required information, but party no.1 did not consider his application and gave appointment to some juniors and though he belongs to schedule caste category, the party no.1 kept the post meant for schedule caste category in group 'D' cadre vacant and all the documents regarding his engagement and payment of wages are with the party no.1 and number of juniors to him were appointed on permanent basis as regular mazdoor by party no. 1, in violation of the provisions of Section 25-H of the Act and party no.1 in

violation of the provisions of Rule 81 of the Bombay Industrial Disputes Rules, did not publish any seniority list before termination of his services and the party no.1 did not club the work done by him and violated the instructions given by the Chief General Manager, Telecom, Maharashtra Circle, Mumbai vide letter no. OM/R/V/RCM/ Review/96 dated 22-09-1996 and though the Department of Telecom Services, New Delhi vide their circular no. 269/94-98-STN-II dated 28-09-2000 issued directions regarding regularisation of casual labourers, the party no. 1 did not follow the directions and BSNL, office of the General Manager, Telecom, Mumbai vide letter no. A/Rect-II/OM/ RM/2002/01 dated 06-08-2002 and corporate office of BSNL, New Delhi vide their order no. 269-94/1998-STN-II/Part IV dated 18-02-2005 issued directions about regularisation of casual labours, but party no.1 deliberately neglected his claim for regular appointment and retrenched him from services without any fault. The workman has prayed for his reinstatement in service with continuity.

3. The party no.1 by denying the allegations made in the statement of claim, has pleaded in the written statement that inter-alia the workman was engaged on call basis for sweeping the small exchange consisting of two rooms, as and when required and considering the nature of engagement, it cannot be said that there was master-servant relationship and in absence of master-servant relationship, the reference is liable to be answered in negative and no case has been made out by the workman and Aurad Sahajani Telephone Exchange is a small auto exchange installed in two rooms and no regular person is posted in the said exchange and the said exchange was required to be opened only when some mechanical fault was to be looked into and during such repairing, at times, the workman was engaged by the departmental persons for sweeping and cleaning of the exchange and the workman was being paid for the same from the contingent fund, at times by money order and at times, by voucher and the workman was never engaged either as a casual labour or a part time labour as per rules and instructions of the department and as such, the workman has no right to claim regularisation or absorption and as per its policy decision, since the year 2004, contract is being given by it for maintenance and housekeeping etc. by floating tenders and as per the policy, there is no work available with it even on call basis and at no point of time, the workman had completed 240 days of work in a calendar year and that apart, it is settled law that completion of 240 days work in a calendar year is not a requirement under law for claiming absorption and regularisation or permanency and considering the nature of the appointment of the workman, question of compliance of Section 25-F and 25-H of the Act does not arise and the advertisement made in the year 2000 has no relevance vis-à-vis the case of the workman and moreover, the workman did not fulfill any of the criteria stipulated in the advertisement and he also did not submit any application for its consideration and the workman is not entitled for any relief.

4. Besides placing reliance on documentary evidence, both the parties led oral evidence to prove their respective claims.

The workman examined himself as a witness in support of his case and filed his examination-in-chief on affidavit. The examination-in-chief of the workman is reiteration of the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that no appointment order was given to him at the time of appointment and he cannot say if in the year 2000, the management had published notice calling applications from the workers, who had already worked in the department and he had applied as per the document, Ext. W-4 on 20-08-2001 and as per the said advertisement, applications were called for from persons, who were not more than 25 years of age as on 01-07-2001 and he was 47 years old on 01-07-2001 and he has not filed any document to show that he had worked for 240 days in any particular year and he had received the salary through post only and he had never signed on acquaintance.

5. One Nandkishore M. Pathak, SDE (Vig and Legal) was examined as a witness on behalf of the party no. 1. In his examination-in-chief, which is on affidavit, this witness has also reiterated the facts mentioned in the written statement. In his cross-examination, this witness has denied the suggestion that the workman was working in Aurad Sahajani Telephone Exchange from 1980 to 01-08-2006 continuously without any break and that in the afternoon of 01-08-2006, the services of the workman were terminated by the Sub-divisional Engineer. This witness has also denied about his knowledge regarding adoption of rules of regularisation of employees of Telecom department by BSNL and about the rules which were being adopted by the Telecom department for regularisation of casual workers and part time workers. He has also denied of having any idea about the circulars issued by the BSNL Authorities regarding regularisaton of casual and part time labours.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman worked from the year 1980 to 01-08-2006 continuously without any break in service and in the afternoon of 01-08-2006, the SDE orally terminated the services of the workman and the workman had completed more than 240 days of work in every calendar year from 1980-81 to 2005-2006 and before termination of the services of the workman, the provisions of Section 25-F of the Act were not complied with and as such, the termination was illegal and the workman received wages for some period by money order and for some period on ACG-17 voucher and Ext. W-12 are some of the money order receipts which were available with the workman.

It was also submitted by the learned advocate for the workman that as per Ext. W-4, the workman on 20-08-2001 made representation to absorb him as a permanent labour, but management did not take any action on his application and Exts. W-5, W-6 and W-7 show that the workman made another representation on 01-03-2003 and management took some action in the matter and inspite of the notification published in the newspaper, "Lokmat" on 07-08-2001 as per Ext. W-8 and the submission of the application by the workman in response to the same on 20-08-2001, management did not retain the workman and appointed some juniors and management also did not publish the seniority list before the oral termination of the workman and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

7. On the other hand, it was submitted by the learned advocate for the party no.1 that the workman has failed to prove that he was in continuous employment and the documents filed by the workman do not show his continuous appointment and no document has been filed by the workman showing that he worked for 240 days continuously and management has been able to prove that the workman was engaged on call basis as and when required and the contention regarding submission of application by the workman on 20-08-2001 in pursuance to the advertisement in the newspaper is quite irrelevant and does not require consideration and apart from the same, the workman was not eligible as per the said advertisement as he was already over age and internal correspondence by the management do not bestow any right in favour of the workman and since 2004, work is being awarded to contractors by way of tenders by party no.1 and in support of the same, Exts. M-I and M-II are produced and there is no denial about the same by the workman, hence question of termination of the workman from 01-08-2006 does not arise and the workman is not entitled to any relief.

8. It is the admitted case of the workman that he was a temporary part time sweeper and though he made representations to make him regular mazdoor, party no.1 did not consider the same. The workman nowhere pleaded as to how he came to be engaged by party no. 1. In his evidence also, the workman has not stated anything about the same. According to the party no.1, the engagement of the workman was in need basis and he was engaged as and when required. In absence of any pleading and any evidence on record as to how the workman came to be engaged by party no.1, it can be held that the engagement of the workman was not in accordance with the Rules of Recruitment by the party no. 1.

9. Though the workman has claimed that he started working for the party no.1 from 1980, not a single document has been filed in support of such claim. From the documents, Ext. W-12, it is found that the first document relates to the engagement of the workman in May, 1983.

As per the claim of the workman, there was an advertisement in the daily newspaper "Lokmat" dated 07-08-2001 for regularisation of the casual and temporary employees engaged prior to 01-04-1985 and accordingly, he submitted his application on 20-08-2001, but his application was not considered and juniors were appointed. On perusal of Ext. W-7, the paper advertisement, it is found that one of the conditions for submission of application was that the age of the applicant should not be more than 25 years as on 01-07-2001. It is clear from the admission of the workman in his cross-examination and so also from Ext. W-4 that the workman was 47 years of age as on 01.07.2001. So, there is nothing wrong in not considering the application filed by the workman on 20-08-2001, as he was already overage.

It will not be out of place to mention here that in Ext. W-4, the workman has mentioned that he was working as part time sweeper for the last 30 years, which means that he was working since 1971. Such claim in Ext. W-4 goes against the claim of the workman that he started working in 1980 with party No.1.

10. Though the learned advocate for the workman has referred to number of letters and circulars in his written notes of argument, such letters and circulars were not produced for perusal and consideration of the Tribunal and in absence of production of the said letters and circulars, the contentions made by the learned advocate in regard to such letters and circulars cannot be considered. It is also necessary to mention here that the learned advocate for the workman in the written notes of argument though mentioned about the judgments reported in 1997 (78) FLR 193 (MP) (M.P. Rajya Beig Evam Farm Vikas Nigam Vs. P.O. Labour Court), 1998 (80) FLR-54 (MP) (M.P.Text Book Corporation Vs. Kirshna Kant Pancholi) did not file the judgment for perusal and consideration of the Tribunal.

11. The workman has claimed that his services were terminated in the afternoon of 01-08-2006 without compliance of the mandatory provisions of Section 25-F of the Act. The party no.1 has denied such claim and plead that the workman did not work for 240 days in any calendar year and as from 2004, the work was given to the contractors by floating tenders, there was no question of termination of the services of the workman on 01-08-2006. In view of such denial, it is for the workman to prove that he had in fact worked for 240 days in the preceding 12 months of 01-08-2006. At this juncture, I think it apposite to mention the principles enunciated by the Hon'ble Apex Court in this regard.

12. The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that :—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the Principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary, if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

13. In the decision reported in AIR 1981 SC-1253 (Mehanlal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that :

"Industrial Disputes Act, 1947 (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman do not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A".

14. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen, Deinay Vs. Rajeev Kumar) have held that :

"Industrial Disputes Act, 1947 (14 of 1947)- S.25-F, 10-Retrenchment compensation-Termination of services without payment of —Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination-Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary, the affidavit of the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

15. The Hon'ble Apex Court in the decision reported in (2005) 5 SCC-100 (Reserve Bank of India Vs. S. Mani) have held that :—

"Industrial Disputes Act, 1947-Ss.25-F, 25-N, 25-B and 11-240 days' continuous Service-Onus and burden of proof with respect to-Evidence sufficient to discharge-Failure of Employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service-Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden-Other substantive evidence needs to be adduced to prove 240 days' continuous service-Instances of such evidence given.

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service.

Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case.

16. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

the enquiry officer. By means of his said order he imposed the punishment of dismissal from service upon the workman accordingly a show cause notice was issued to the workman. Ext., M-11 is the copy of the said letter. Ext.M-12 is the representation moved by the workman against the show cause notice. After considering the recommendation the disciplinary authority finally passed order dated 14-06-83, copy of which Ext. M-13 and he confirmed the proposed punishment of workman's dismissal from service without notice. However as regard charge No. 5, after considering the submission made by the workman in his representation he held that the said stood proved only to the extent that the workman reported at the training camp at Kanpur one day later. Against the order of the punishment passed by the disciplinary authority the workman preferred an appeal which was dismissed by the Chief Regional Manager/Appellate authority by means of his order dated 15-10-84, copy Ext. M-16.

5. The workman's case is that he was appointed as guard in the bank in 1971 and confirmed on the said post in 1973. In March 1979 he was posted at Golagokaran Nath Branch. Since the branch manager of the said branch was annoyed with him with a view to victimize him he issued him the charge sheet in question. According to the workman the charge sheet was not issued by the competent authority. The construction of charge sheet was illegal. The allegations on which he was charged amounted to minor misconduct. He alleges that he was not supplied with the copies of the material documents on which the charges were based. During the inquiry he was not given full opportunity to defend himself. The findings of the inquiry officer were perverse as these were not based on material on record and legal evidence. He further alleges that the punishment of dismissal from service awarded to him was highly disproportionate and excessive when looked into the gravity of charges.

6. He has therefore, prayed that the order of the punishment dated 01-06-84, be set aside and he be reinstated in service with full back wages and consequential benefits.

7. Opposite party has filed the written statement contending that that the workman joined the service as guard on 29-07-73 and confirmed on the said post with effect from 04-03-74. It is stated that while he was posted at Golagokaran Nath branch he was served with a charge sheet dated 20-02-82. It was valid and it was signed by the competent Authority that the Regional Manager. The charges were specific. The documents were supplied to the workman during the inquiry proceedings which were perused by him. It has been denied that the charges amounted to minor misconduct. It is stated that the inquiry as conducted by following the principles of natural justice. The workman had fully participated all along and the findings of the enquiry officer were based on legal evidence. The finding of the enquiry officer and the order of the disciplinary authority and appellate authority were based on material on record which was not malafide and the punishment awarded to the workman was quite proportionate having regard to the gravity of the charges.

8. Workman has also filed rejoinder in which nothing new has been pleaded by him.

9. My learned predecessor after giving full opportunity of arguments to the contesting parties and after giving his anxious consideration to the oral as well as documentary evidence on record gave its award on 21-02-91 by exercising the powers of Section 11-A of the Industrial Disputes Act, 1947, and modified the punishment of dismissal into reinstatement of the workman in the service of the bank with stoppage of one annual graded increment which cumulative effect.

10. This award was challenged by the opposite [party by filing writ petition no. 17586 of 91 which was decided by the Hon'ble High Court on 27-07-04, wherein the award of the tribunal was set aside and the matter was remanded back for fresh adjudication.

11. As my learned processor has held that the inquiry conducted by the opposite party was not fair. In such circumstances and where the opposite party has also led the evidence to establish the charges therefore, considering that the inquiry was not conducted fairly, now I am looking into the matter whether the opposite party has been able to establish the charges against the charge sheeted employee before this tribunal.

12. To establish the charges opposite party has produced oral as well as documentary evidence whereas the claimant has denied the charge by producing himself as a witness as W.W.1.

13. I have examined oral as well as documentary evidence of the parties.

14. There were number of charges levelled against the charge sheeted employee. Firstly I am looking into the charge nos. 5 and 7 which relates to the misconduct of the delinquent employee.

15. Regarding charge no. 5 witness M.W.1 Sri Dilip Kumar Mehrotra who is a branch manager stated on oath that the claimant Sri Tiwari was relieved from his duties on 27-04-81 and he was directed to report for training at Kanpur Green Park Stadium. He was to report on 28-04-81 by 4.00 p.m. He was having the fire arm along with cartridges in his possession. But he did not report at the training centre. He was directed to deposit the gun and cartridges at the training centre but he did not deposit. He did not present himself on 29-04-81 at the evening parade and was found absent. He did not submit any letter for his absence to the security officer at the training centre. Paper no. 47/2 is a

letter of Brgd. Circle Security Officer written to the Chief Regional Manager SBI, copy addressed to the Regional Manager and Branch Manager of the SBI, Golagokaran Nath. He has clearly written that Sri Tiwari did not report for duty on 28-04-81. He was also found missing along with the bank gun and cartridges at 5.00 p.m. on 29-04-81. He has written—his being absent with bank gun is a very serious offence and a high security risk. It is strongly recommended that suitable action may be recommended for his dismissal.

16. M.W.1 also stated that the CSE did not obtain any relieving certificate from the training centre which is required after completion of training. This training was to be held till 05-05-81.

17. This relates to charge no. 5. The witness has been cross examined on this point by the opposite party in detail but nothing has come out in his statement which makes his statement unbelievable. When the statement of W.W.1 examined by me in this reference, I find that the statement given by W.W.1 on this point is vague and unspecific. He stated in the cross that he does not know when he was relieved from duty. He does not know whether he has to reach on 28-04-81. His statement that when he reached for training centres and reported at 3.00 O'clock and no officer was found. This statement is totally unbelievable. His statement that the security officer permitted him to keep the gun and cartridges with him is also unbelievable. There is no application in this respect filed by the W.W.1. He stated at page no. 6 that when he did not join for the training centre so question of getting the relieving certificate does not arise. Therefore, from this statement also the whole charge of the opposite party has been established as he himself admitted that he did not join the training centre. His statement is very shaky which cannot be believed as true, therefore charge no. 5 is found to be established. This charge has also been found to have been proved by my learned predecessor in earlier award of the tribunal given in the year 1991.

18. There is another charge, charge no. 7, which relates to that the CSE is not obeying the direction of the Senior Officers. Several times he has been issued show cause notices/memos. He never replied either of any memos. Witness M.W.1 has specifically stated in his evidence that memos dated 24-04-80, 07-08-80 and other memos mentioned at page no. 7 and reminder were issued to the CSE. All these memos were filed during the inquiry proceedings. The CSE did not reply any of the memos. There is a reference in paper no.48/11. During inquiry CSE did not file any reply of these memos or did not say that he has filed the reply earlier. Thus he has committed the breach of the orders of the Senior Officers. This witness has been thoroughly cross examined also. Nothing has come out in his statement which may make his statement unbelievable. When W.W.1 was cross examined by the opposite party on this point again he replied in a vague manner, he said, he does not know whether he has filed the reply or not during the inquiry proceedings. There does not appear to be any mala fide on the part of the management in regard to charge nos. 5 and 7.

19. It has been contended by the opposite party that whatever the original documents were in their possession they have filed it, but it being an old case so they summoned documents from the claimant himself as the opposite party has supplied to him, the evidence of the parties were also taken in this respect. It is stated by the workman that all the copies which were supplied to him were given to his previous A.R. and he did not thought it proper to obtain those papers from his counsel. Therefore, there does not appear to be any mala fide of the opposite party in not producing the original of other documents. Whatever the documents and evidence has been produced charges 5 and 7 clearly stands to be proved.

20. There is an other charge. Charge no. 3 wherein it has been alleged that one account holder Smt. Maiki Devi has given Rs., 350 to deposit in her account but it was not deposited are returned after 15 days.

21. I have examined the evidence on this point. There is no direct evidence on this point, as Smt. Maiki Devi has not been produced here, though she was produced during the inquiry proceedings. During the inquiry proceedings it has been found that she is an illiterate lady and she has not levelled any allegations against the CSE. M.W.1 is a witness of record and is not a witness of fact. In my view there is no such direct or solid circumstantial evidence from which it can be inferred that the CSE has been guilty of holding the amount of Rs. 350 and misusing it. I find that this charge has not been truly proved by the opposite party against the workman.

22. In view of above it is held that the action of the opposite party as referred to in the schedule of reference order is held to be justified and legal. Award is given accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ.3027.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 282/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.08.2012 को प्राप्त हुआ था।

[सं.एल.-12012/175/99-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 3rd September, 2012

S.O.3027.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 282/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 31-08-2012.

[No. L-12012/175/99-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/282/99

Presiding Officer: Shri Mohd. Shakir Hasan

The Asstt. Secretary,

SBI Workers Union,

C/o SBI, Sector-I,

Bhilai (MP) ...Workman

Versus

The Dy. General Manager,

State Bank of India,

Zonal Office, Shanker Nagar,

Raipur (MP) ...Management

AWARD

Passed on this 12th day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/175/99-IR(B-I) dated 13-8-99 has referred the following dispute for adjudication by this tribunal:—

> "Whether the action of the management of State Bank of India in terminating the service of Shri Labha Kumar Bhondle, Temporary employee (Sub-ordinate cadre) at Alka Departmental Stores, Sector-10, Bhilai Branch w.e.f. closing of business on 13-11-96 is justified? If not, to what relief the workman is entitled to ?"

2. The case of the workman/union in short is that the workman Shri Labha Kumar Bhondle was appointed as temporary employee in the year 1988 by the management Bank at Bhilai Branch on full time basis. Since 18-4-93 he worked uninterruptedly till termination from service on 13-11-1996. He was neither given one month's notice nor paid one month pay in lieu of notice nor paid any retrenchment compensation as provided under Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that the termination of the workman is illegal and arbitrary. It is stated that after termination the workman is not in gainful employment and his family is on the street. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed statement of claim (Written statement) to contest the reference. The case of the management, inter alia, is that the alleged workman was engaged as purely temporary casual employee in the State Bank of India, Alka Departmental Stores, Sector-10, Bhilai Branch. His services were utilized intermittently. He worked in the year 1988-99 days, in 1989-7 days, in 1990-9 days, in 1991-53 days, in 1992-124 days, in 1993-264 days, in 1994-299 days, in 1995-297 days and in 1996-242 days. He was engaged as purely casual employee on daily wages basis till 13-11-1996. His engagement was on contract basis which was commenced with the opening hours of the bank and ended with the closing hours of the Bank and the provision of Section 2(oo)(bb) of the Act, 1947 is attracted. It is stated that Branch Manager was authorized to engaged on daily wages on exisgency of work. It is stated that no notice was required to be given to the daily rated employees nor he came within the meaning of retrenched employees as defined under Section 2(oo) of the Act, 1947. It is submitted that the alleged workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are for adjudication—

I. Whether the action of the management in terminating the services of Shri Labha Kumar Bhondle w.e.f. after closing the business on 13-11-96 is justified?

II. To what relief the workman is entitled?

5. The following facts are admitted by both the parites—

1. The workman Labha Kumar Bhondle was engaged by the management Bank as casual employees on daily rated.

2. He had worked in the management Bank in the year 1988-99 days, in 1989-7 days, in 1990-09 days, in 1991-53 days, in 1992-124 days, in 1993-264 days, in 1994-299 days, in 1995-297 days and in 1996-242 days.

3. He was terminated from service after closing of the Bank on 13-11-96.

4. He was not given one month notice nor one month wages in lieu of notice.

5. He was also not paid retrenchment compensation as required under Section 25-F of the Act, 1947.

6. **Issue No. I**

Now the important point for consideration is as to whether the engagement of the workman was a contract of employment between the employer and the workman and

on its expiry the workman was terminated and the provision of Section 2(oo)(bb) is attracted. According to the workman, he was engaged as a temporary employee and his termination is a retrenchment. It is denied that his engagement was on the basis of contract and the provision of Section 2(oo)(bb) of the Act is attracted. Whereas the only contention of the management is that the workman was engaged on contract basis which was commenced with opening hours of the Bank and ended with the closing hours of the Bank and the provision of Section 2(oo)(bb) of the Act, 1947 is applicable. As such no notice and no payment of compensation are required. Admittedly there was no agreement of contract in writing between the management Bank and the workman. It is also an admitted fact that the workman has worked more than 240 days every year from 1993 to 1996. The workman shall be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date with termination or reference to which the calculation is to be made under the provision of Section 25(B)(2) of the Act, 1947. This itself shows that his service is to be considered as continuous service under Section 25(9B)(2) of the Act, 1947 and his terms of engagement as pleaded by the management that it was commenced with the opening hours of the Bank and ended with the closing hours of the Bank is not justified and acceptable. The management has also admitted in the pleading that the Branch Manager was authorized to engage on daily wages on exisgency of work. This shows that the relationship of employer and employee between the management Bank and the workman was established. Thus it is clear from the pleading itself that the provision of Section 2(oo)(bb) of the Act, 1947 is not attracted and the workman is considered to be retrenched by the management bank under the provision of Section 2(oo) of the Act, 1947.

7. Now let us examine the evidence adduced in the case. Though the management has already admitted in the pleading that the workman had worked from 1988 to 1996 as daily rated employee and from 1993 to 1996 he had worked more than 240 days in each year to establish sufficiently that he shall be deemed to be in continuous service for a period of one year during the twelve calendar months preceding the date with reference as provided in Section 25 (B) (2) of the Act, 1947. The workman Shri Labha Kumar Bhondle has supported the case in his evidence. He has stated in his cross-examination that he was engaged at the relevant period as daily wages employee and after 13-11-96, his work was not taken by the management. He has denied that he was engaged on contract basis. This evidence also shows that he was engaged continuously under the provision of Section 25(B)(2) of the Act, 1947 from 1993 to 1996 as he had worked more than 240 days in every year till termination. Thus it is clear that there was no contract as has been alleged by the management rather he was engaged on exisgency of work.

8. The management has also adduced one witness. The Management witness Shri Thomnrotu Bhagwati Rao is presently working as Asstt. General Manager in the Zonal Office, Raipur. He has also supported in his evidence that the workman was engaged as purely temporary casual workman at Alka Departmental Stores Branch at Bhilai. This shows that he was not engaged on any contract basis. He has also admitted in his evidence about the period of work done by the workman and has specifically stated the period of works done in each year from 1988 to 1996. His evidence also shows that the workman shall be treated as in continuous service in each year from 1993 to 1996 till date of termination. Thus his evidence also proves the case of the workman.

9. Now another important point is as to whether the workman was given one month notice and was paid retrenchment compensation before termination. On the basis of the discussion made above, it is clear that the employment of the workman shall be deemed to be in continuous period of one year during the twelve calendar months preceding the date with reference. As such the provision of Section 25 F of the Act, 1947 is attracted in the case. Admittedly the management had not given one month notice nor one month wages in lieu of notice and retrenchment compensation as required under Section 25-F of the Act, 1947 before termination. Therefore the termination of the workman after closing hours of the business of the Bank on 13-11-1996 is illegal and against the above provision of the Act, 1947. This issue is decided in favour of the workman and against the management.

10. Issue No. II

Another important points are as to whether the workman was in gainful employment after termination or whether the workman is entitled to back wages. There is specific pleading of the workman that he is out of gainful employment since his termination and his family is on the street in these hard days. It is stated that beside legal protection, he deserves sympathy on humanitarian considerations. There is no case of the management that after disengagement by the management, the workman is in gainful employment. The workman has stated in his evidence that he has been put to starvation and his family is on the street. This aspect shows that he is without any employment. There is no cross-examination of the management on the above point. There is no reason to disbelieve the evidence of the workman on the point of gainful employment.

11. The learned counsel for the management has argued that the workman was last engaged about 15 years ago. It is stated that the Hon'ble Supreme Court has consistently taken the view that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate even though the termination of the employee is in contravention of the prescribed

procedure. Compensation instead of reinstatement has been held to meet the ends of justice. The learned counsel for the management has relied the decision reported in 2011(1) MPLJ 11, Incharge Officer and Another Vrs. Shanker Setty wherein the Hon'ble Apex Court has held that—

> "We think that if the principles state in Jagbir Singh, (2009) 15 SCC 327 and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000 (Rupees One Lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum."

The learned counsel for the management has also relied a decision reported in (2009) 15 S.C.C. 327 Jabir Singh Vrs. Haryana State Agriculture Marketing Board and Another. Thus it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. The management is, thus, directed to pay Rs. 1,00,000 (Rupees One Lac) to the workman within two months from the date of receipt of the award failing which he shall be entitled for reinstatement with full back wages. Accordingly the reference is answered.

12. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ.3028.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 192/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2012 को प्राप्त हुआ था।

[सं. एल-41012/196/98-आई.आर. (बी-I)]

रमेश सिंह, डैस्क अधिकारी

New Delhi the 3rd September, 2012

S.O.3028 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 192/99) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, which was received by the Central Government on 03-09-2012.

[No. L-41012/196/98-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/192/99

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Sunil Yeshwant,
R/o Prem Nagar,
RB-I, 404 G New Yard,
Itarsi ... Workman

Versus

The Divisional Railway Manager (P),
Central Railway,
Habibganj,
Bhopal (MP) ... Management

AWARD

Passed on this 24th day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-41012/196/98-IR (B-I) dated 5-5-99 has referred the following dispute of adjudication by this tribunal :—

> "Whether the action of the management of Central Railway, Bhopal in not paying the wages from 29-11-97 to 2-7-98 is justified? If not, to what relief the workman is entitled for ?"

2. The workman appeared on 28-7-05 along with his counsel but he did not file his statement of claim on several dates. Lastly he became absent. Therefore, the reference is proceeded exparte against him on 11-8-2010 after about five years of his appearance.

3. The management also appeared in the case. Subsequently he filed an application dated 20-12-2011 that the workman has not filed any statement of claim and there is no particulars of services of the workman available to the management. Thus the management does not want to file any Written Statement. It is submitted that accordingly the award be passed. This clearly shows that there is no dispute for adjudication before the Tribunal and this is a case of no dispute.

4. Considering the above aspect of the case, it is clear that the workman has no dispute in existence or he does not want to raise any dispute. As such he became absent. Hence it is a case of no dispute. Accordingly the reference is answered.

5. In the result, no dispute award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ.3029.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 111/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2012 को प्राप्त हुआ था।

[सं. एल-41012/54/95- आई.आर. (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 3rd September, 2012

S.O.3029 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/96) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, which was received by the Central Government on 03-09-2012

[No. L-41012/154/98-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/111/96

Presiding Officer : SHRI MOHD. SHAKIR HASAN

Shri Ganesh Prasad,
C/o Manish Dressers,
Kasturba Nagar,
Near Post Office,
Chungi Chowki,
Kanchghar, Jabalpur ... Workman

Versus

The Divisional Railway Manager,
Central Railway,
Jabalpur. ... Management

AWARD

Passed on this 24th day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-41012/154/95-IR (B-I) dated 17-4-96 has referred the following dispute of adjudication by this tribunal :—

"Whether the action of the management of Central Railway, Jabalpur (MP) in terminating the services of Shri Ganesh Prasad Jagmohan, Ex-Loaderman, Locoshed, NKJ w.e.f. 10-6-85 is legal and justified ? If not to what relief the workman is entitled for ?"

2. The case of the workman in short is that he was working as Ladderman in Locoshed at New Katni Junction. He was charge sheeted on 11-2-1985 for unauthorized absence. A departmental proceeding was initiated against him on 24-5-1985. The Enquiry Officer submitted his findings holding him guilty of the charges. The Disciplinary Authority agreed with the findings and imposed the punishment of removal from service vide order dated 4-6-1985. The workman preferred appeal but the same was rejected. It is stated that the management had not examined any witness. The Enquiry Officer simply examined the workman and he had not admitted the charges rather he had explained the circumstances of his absence. It is stated that the punishment is disproportionate to the charges alleged to have been proved against him. It is submitted that the order of removal from service be set aside.

3. The management appeared and filed Written Statement. The case of the management, interalia, is that admittedly the workman was Ladderman at New Katni Junction. He was charge-sheeted on 11-2-1985 for his unauthorized absence. The workman appeared in the departmental enquiry and admitted the charges of his absence of 77 days. The Enquiry Officer after considering the documents and the admission of the workman submitted enquiry report holding him guilty of the charges. The Disciplinary Authority imposed the punishment of removal from service on 4-6-1985 and his appeal was rejected on 26-7-85. It is stated that the punishment imposed on the workman is proportionate with the conduct of the workman and no interference is warranted. The workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication—

I. Whether the departmental enquiry conducted by the management against the workman is legal and proper?

II. Whether the punishment of removal from service imposed on the workman is proportionate to the charges committed by the workman and is required any interference under the provision of Section 11A of the Industrial Dispute Act, 1947 ?

III. To what relief the workman/his legal heir is entitled?

5. Issue No. I

This issue is taken up as preliminary issue. After hearing the parties and after perusing the materials on the record, it is held on 28-7-2011 that the departmental enquiry conducted by the management against the workman is proper and legal. Thus this issue is already earlier decided.

6. Issue No. II

Now the very short question is for consideration as to whether the punishment is proportionate and it requires

any interference under Section 11A of the I.D. Act. The learned counsel for the legal heir of the workman has contended that there was no charges of habitual absence. Moreover the charge was for absence of 142 days from April 1983 to November 1984 whereas the part charge is alleged to have been proved that the workman was unauthorized absent for 77 days only. It is stated that the punishment of removal from service is disproportionate to the part charge alleged to have been proved against him. It is not out of place to say that during the pendency of the reference case the workman died on 6-8-1998. The wife of the workman Smt. Pushpa Sahu is substituted in place of the workman on 28-1-99.

7. The learned counsel for the legal heir submits that the provision of Section 11 A of the I.D. Act, 1947 provides that if the dismissal is not justified from the materials on the record, the Court has jurisdiction to pass any lesser punishment in lieu of discharge or dismissal from service. Section 11 A of the I.D. Act, 1947 runs as follows—

"Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen-Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

8. The record clearly shows that no fresh evidence is adduced in the case on the point of charge. The materials available in the departmental enquiry clearly shows that the charge was of unauthorized absence of 142 days and the part charge appears to have been proved that he was unauthorised absent for 77 days in broken period. Moreover the same had been accepted by the deceased workman on the ground that his mother was very old and was suffering from asthama. No evidence of the witness of the management was adduced to prove the said charge. There is nothing on the record to show that previously he was punished or warned by the management for absence from duty. The workman had further requested that he would not give chance in future. Now the workman is dead. I find that being a first partly proved charge against him on his voluntary admission on the reasons of his mother's illness, the punishment of removal from service is excessive and disproportionate and any lesser punishment is required in lieu of dismissal from service. Accordingly the order dated 4-6-85 of removal from service of the workman w.e.f. 10-6-85 is reduced to the punishment of compulsory retirement from the same date. This issue is thus answered in favour of the workman and against the management.

9. Issue No. III

It is clear that the workman is dead and his wife Smt. Pushpa Sahu is substituted in his place. Accordingly the management is directed to pass appropriate order to pay retirement benefits in favour of legal heir if admissible in accordance with law and rules considering that the workman had compulsory retired w.e.f. 10-6-85. The reference is thus answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 3 सितम्बर, 2012

का.आ.3030.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरियन्टल बैंक ऑफ कोमर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 11/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-09-2012 को प्राप्त था।

[सं. एल-12012/628/1989- आई.आर. (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 3rd September, 2012

S.O.3030.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Oriental Bank of Commerce and their workmen, received by the Central Government on 03-09-2012

[No. L-12012/628/1989-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

PRESENT : Shri N.K. Purohit, Presiding Officer

I.D. 11/2010

Reference No. L-12012/628/1989-IR(B-I) Dated 21-4-2010

Shri Bhagwan Singh,

S/o Shri Chhote Lal,

Residence of Anah Gate Kodian Mohalla,

Bharatpur.

V/s.

Regional Manager,
Oriental Bank of Commerce,
Anand Bhawan Sansar Chandra Road,
Jaipur.

Present:

For the Applicant : None
For the Non-applicant : Sh. B.S. Ratnu, Adv.

AWARD

24th July, 2012

1. The Central Government in exercise of the powers conferred under clause (d) of Sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:

> "Whether the action of the management of Oriental Bank of Commerce, Bharatpur in terminating the service of Shri Bhagwan Singh, Peon w.e.f. 29-6-1986 is legal and justified? What relief the concerned workman is entitled to ?"

2. The workman in his claim statement is pleaded that he has employed by the non-applicant as peon on 1-1-85 but his services were terminated on 29-6-86 in violation of section 25-F & G of the I.D. Act & Rule, 77 & 78 of the Rules, 1957.

3. The workman has pleaded that earlier he had raised an industrial dispute in this regard which was referred to Central Industrial Tribunal, Jaipur for adjudication and against the award passed by the said tribunal a writ petition was filed by him which was rejected. Now, Central Government has again referred the said matter for adjudication.

4. The workman has prayed that since his services were terminated in violation of the provisions of section 25-F & G, he should be reinstated with all consequential benefits.

5. An application on behalf of the management was moved on 10-3-2011 stating therein that the dispute involved in the present matter was earlier referred to C.I.T., Jaipur and it was registered as CIT No. 17/93 and award was passed on 17-4-97. The same matter has been referred for adjudication; therefore, the present reference is not maintainable on the ground of principle of res-judicata.

6. The management has produced the copy of the award dated 17-4-97. Upon perusal of the award passed in CIT No. 17/93, it reveals that earlier vide reference order No. L-12012/628/89-D-II-A dated 21-10-93 the following dispute was referred for adjudication:-

> "Whether the action of the management of Oriental Bank of Commerce in terminating the services of Shri Bhagwan Singh is justified? If not, what relief, is the workman concerned entitled to ?"

7. Upon perusal of the said award it further reveals that the workman therein pleaded that he was employed on 9-12-85 and his services were terminated on 29-6-86 in violation of Sections 25-F & G of the I.D. Act. In the said award the action of the management in terminating the services of the workman was found valid, legal and it was held that workman is not entitled to any relief.

8. The workman himself has admitted in his claim statement that earlier the same dispute was referred and award was passed. He has further admitted that a writ petition filed against the said award was also rejected; therefore, the award has attained finality. Strangely, for the reasons best knwon to the appropriate government, the same controversy has been again referred for adjudication.

9. Admittedly, in both the reference orders parties are same, subject matter is same and the controversy involved in the present matter was directly involved in earlier award dated 17-4-97. The earlier award has been passed by a competent court having jurisdiction to pass such award, therefore, the objection raised on behalf of the management is sustainable.

10. For the foregoing reasons the principle of res-judicata applies in the present matter and the claim of the workman is not maintainable. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

11. Award as above.

N.K. PUROHIT, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2012

का.आ.3031.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद, गुजरात के पंचाट [संदर्भ संख्या 157/2004] आई. टी.सी. 41/1999 (ओल्ड) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-09-2012 को प्राप्त हुआ था।

[सं॰ एल-12012/204/1998-आई.आर.(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 5th September, 2012

S.O. 3031.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. No. 157/2004, ITC 41/1999 (old)] of the Central Government Industrial Tribunal-cum-Labour Court AHMEDABAD (GUJARAT) as shown in the Annexure, in the Industrial dispute between the management of State Bank of Saurashtra and their workman, received by the Central Government on 05-09-2012.

[No. L-12012/204/1998-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present -
Binay Kumar Sinha,
Presiding Officer,
CGIT cum Labour Court,
Ahmedabad, Dated 24.07.2012

Reference: CGITA of 157/2004
Reference: ITC. 41/1999 (Old)

(1) Managing Director,
State Bank of Saurashtra
(Now State Bank of India),
Head Office, Nilambaug,
Bhavnagar-364001
(2) Branch Manager,
State Bank of Saurashtra
(Now State Bank of India)
Main Branch, Talaza,
Bhavnagar-364001. .....First Party

And their workman
Smt. Muktaben P. Gohel
C/o. , Manibhai G. Gandhi,
113, City Centre Complex, Kalanala,
Bhavnagar. .....Second Party

For the first party : Shri Bhargav M. Joshi, Advocate
For the second party : Shri Manibhai Gandhi, Advocate

AWARD

As per order dated New Delhi 22-01-1999 the Appropriate Government, Ministry of Labour, Shram Mantralaya by notification No. L-12012/204/1998-IR (B-I) under clause (d) of sub Section 1 and sub-Section 2 (A) of section 10 of the Industrial Dispute Act, 1947 referred the dispute for adjudication to the Industrial Tribunal Ahmedabad, formulating the terms of reference under the Schedule as follows:—

SCHEDULE

"Whether the action of the management of State Bank of Saurashtra in terminating the services of Smt. Muktaben P. Gohel w.e.f. 01-08-1996 is justified ? If not, what relief the concerned is entitled"

(2) Both parties the management and the workman filed their respective pleadings in this case.

(3) The case of the second party workman as per statement of claim Ext. 3 is that she was appointed as peon to do work at Talaja main branch of State Bank of Saurashtra (India) in the year 1993 and he worked upto 12-07-1996 but thereafter she was orally terminated from the work. She claimed that she worked for 240 days in the calendar year. She worked for 560 days as water woman during the period from October, 1993 to February, 1995 all days 17 months with a monthly fixed scale of Rs. 300 and thereafter she worked from February, 1995 till July, 2011 as a peon against permanent vacant post. She has claimed that from 01-08-1995 to the termination in July, 1996 she completed more than 240 days of work in calendar year preceding her termination. Further case is that though she completed 240 days of works but the management of State Bank of India failed to comply with the provision of Section 25 (F) of the ID Act and that neither notice or notice pay was given to her before her retrenchment by oral order. Further case is that since management of first party has violated the provision of Section 25 (F) and so she is entitled for reinstatement with full back wages from the date of oral termination 01-08-1996.

(4) As against this the case of the first party as per its written statement at Ext. 6 is that the first party is a bank constituted under the Banking Regulation Act, govern by service rules. There is a recruitment board namely Banking Services Recruitment Board and the appointment of staff is made by selection through written test and oral interview conducted by the Banking Service Recruitment Board for subordinate staff. Further case is that the branches of the Bank are entitled to engage certain casual workers on daily wages basis if there is any work of temporary nature. Denying the claim of the second party workman as per statement of claim it has been contended that the second party Muktaben P. Gohel was engaged by Talaja (Main) branch as casual labour for performing the work of casual nature and that engagement on daily rated wages. Her engagement was not through selection process. Her engagement as casual labour on daily wages was not on permanent post and also not for the work of permanent nature. The second party Smt. Muktaben P. Gohel was not given any appointment letter, she did not appear in any written test or face oral interview, rather her engagement was as casual labour on daily wages on exigencies and Recruitment Rules was not followed and so the second party is not eligible or entitled to claim for regularization or even for reinstatement as casual labour. Further case is that the second party workman never completed 240 days of work in any calendar year rather she was engaged as casual labour as and when needed by Talaja main branch and so the second party has no legal right to claim reinstatement on the post of peon. The post of peon is of permanent nature and peon is recruited through selection process and no such selection process had been followed while engaging the second party as casual labour. Further case is that since the second party workman was casual workers on daily rated basis and so there was no need for giving retrenchment notice under section 25 (F) of the ID Act. On these scores prayer has been made to reject the reference since the second party workman is not entitled to get any relief.

(5) In view of the pleadings of the parties the following issues are taken up for determination.

ISSUES

(i) is the reference maintainable?

(II) Has the workman valid cause of action to raise Industrial Dispute?

(III) Whether the workman (second party) has completed 240 days of work in calendar year preceding his termination w.e.f. 01-08-1996.

(IV) Whether the second party is entitled to get relief as claim?

(V) What orders are to be passed ?

FINDINGS

(6) ISSUE NO. III

As per Ext. 7 the second party prayed for production of documents from the first party of the vouchers from the year 1994 to December-1997 for four years and also for the attendance-sheet if available in the Bank from the year 1994 to December-1997. Thereafter an order was passed on 11-01-2001 directing production of documents as prayed for. Thereafter some documents were produced with list as per Ext. 10 by the second party and its production was allowed. As per order regarding production of document the first party produced the documents at Ext. 12 through 27 vouchers from 03-01-1994 to 22-05-1997 were produced and also affidavit of Shri A.P. Vyas, Branch Manager was filed in support of the production of those documents. At Ext. 14 the second party further demanded production of documents vouchers for the months of August, September, October, November and December-1995 and order was passed by Industrial Court comply or reply.

(7) The workman Muktaben P. Gohel examined herself at Ext. 15 in support of case and she was also cross-examined by the lawyer of the first party Bank. During cross-examination she fairly admitted that there is no document with her to show that she had been engaged/appointed on permanent vacant post of peon. She also admitted that she was engaged on daily rated basis when the permanent employee went on leave and she was engaged on work on 21-04-1993. She also admitted that she was being paid daily rated wages through vouchers. On the other hand witness of first party namely N.D. Chaklasiya, Branch Manager State Bank of India, Talaja main branch examined himself on affidavit at Ext. 28 denying the claim of the second party that she was engaged on permanent vacant post. She also denied that the second party ever completed 240 days of work in calendar year rather she had worked intermittently on daily rated basis. According to management witness Smt. Muktaben P. Gohel was engaged by Branch Manager of Talaja Branch as and when absolutely necessary and purely on day to day payment basis and that she was never engaged to do work of peon during the period from 01-03-1995 to 31-07-1996. Prior to the year 1995 she was doing work of fetching and serving water to staff on daily rated and in the February-95 she worked for various labour work and to served water to the staff for 17 days as per copy of vouchers of payment. Further case is that prior to March-1995 she was doing work of serving water to staff of the branch on daily rated basis of Rs. 10 per day. Prior to 1995 she worked intermittently and not worked continuously and so water woman work of the second party was not work of peon. Further evidence is that the vouchers produced by the first party clearly go to show that she was never engaged as water woman at fixed rate of Rs. 300 per month. From March-1995 and onward till 31-07-1996 she was again engaged on daily casual work and not a fixed wages. His further evidence is that Smt. Muktaben P. Gohel had not worked continuously for 240 days but work on intermittently manner. The management witness was thoroughly cross-examined by the lawyer of the second party workman but nothing could have been gained to show that her engagement/appointment though not under staff Recruitment Rules, was made on permanent vacant post.

(8) From scrutinizing the evidence of both sides, it appears that the second party has claimed that she completed more than 240 days of work in calendar years 1995, 1996 preceding her termination w.e.f. 01-08-1996. On the other hand the evidence of the management witness go to show that she never completed 240 days of work in the calendar year either in 1995 or in 1996. Rather she worked intermittently and during that period as and when work was required.

(9) Mr. M.G. Gandhi learned advocate for the second party workman gave much stress upon Ext. 10/5 to show that in the year 1995-1996 from 01-08-1995 to termination in July-1996 she completed more than 240 days of work. But from very perusal of Ext. 10/5 it is clear that this statement regarding work yearwise has been made by the workman herself without any authentication by the bank official. The question arises if the workman completed 240 days of work then why not she obtained periodical certificate from the Bank Manager of the concerned branch, the statement showing number of works in the years 1995, 1996 are the self-made a statement of the workman. From the 27 vouchers at Ext. 11/1 produced by the first party Bank it appears that if her month wise work from July, 1996 and backward upto July, 1995 is taken into account. It appears that she work 249 days. Though the management witness at Ext. 28 denied that she never completed 240 days of work but in view of the 27 vouchers and also as per Ext. 14 through which vouchers of August, September, November and December-1995 were demanded by the second party from first party but the second party did not comply even passing order to comply or reply, and adverse inference has to be drawn that the second party workman completed 240 days of work

preceding termination w.e.f. 01-08-1996. So in such view of the matter when she had completed 240 days of work counting back from July-1996 to August-1995, I am of the firm that the first party Bank was duty bound either to issue notice regarding her retrenchment or to pay compensation for retrenchment or even one month notice pay prior to his alleged oral termination w.e.f. 01.08.1996. This issue is therefore decided in favour of the second party workman Muktaben P. Gohel.

(10) ISSUE No. IV

The learned counsel for the second party argued that the workman had completed 240 days of work but the employer first party Bank has violated the provision of Section 25 (F) in not giving retrenchment notice or notice pay and so the workman is entitled for her reinstatement from the date of oral termination with full wages. In this connection he has relied upon the case law reported in LLN January-2010 SC 48 in the case Between Director, Fisheries Terminal Division and Bhikubhai Meghanjibhai Chavda, LLN 2007 670, Gujarat High Court, Executive Engineer (Stores) and another and Harsha M. Jani, LLN (V) 2008 167 Gujarat High Court— Executive Engineer V/s Harisingh Modhbhai Gadhvi, LLN 2003 Rajasthan High Court, 484 State of Rajasthan and others and Mahendra Joshi and another, LLN 2004 Allahabad High Court 906 Utter Pradesh Avas Evam Vikas Parishad, Lucknow and another V/s Labour Court-II and another, LLN 2008 Allahabad High Court 433 (Secretary, Krishi Utpadan Mandi Samiti, Khair District Aligarh V/s Presiding Officer, Labour Court, U.P., Agra and others), LLN. 2004 Bombay High Court 928 (Executive Engineer, Irrigation Division, Gondia, and others V/s Maroti, son of Janba Dupare). Learned counsel for the second party further relied upon the case law — Chairman, Punjab National Bank and another V/s Astamija Dash (C.A. No. 3125 of 2008) between Astamija Dash and Chairman, Punjab National Bank and Another (C.A. No. 3126 of 2008) and in the case law of U.P State Electricity Board and Pooran Chandra Pandey and others (LLN 2008) SC 965, case of Ramesh Kumar V/s State of Haryana (LLN 2010) 831 SC, Anoop Sharma V/s Executive Engineer health Division No. 1 Panipat Haryana (LLN 2010) 831 SC (decided on 08-04-2010), Krishan Singh and Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) — LLN 2010 -634 SC, Gujarat Pollution Board V/s Jagdish Nathabhai Chavda LLN (5) 2009 176 Gujarat High Court, but case of Harjider Singh and Punjab State Warehousing Corporation (LLN 2010) 14 SC, Central Bank of India V/s S. Satyam and others (LLN 1997) 31 SC, Union Bank of India and another V/s Mohan Pal and others (LLN 2002) between Lt. Governor (Administration) and others V/s Sadanandan Bhaskar and others. Learned counsel for the second party has further relied upon the case law Reliance Energy Ltd., Mumbai and Yadayya Giri and others LLN 2010, Bombay High Court, Tamilnadu State Transport Corporation (Maduria Division-IV) Ltd. and (1) Presiding Officer, Industrial Tribunal, (2) Secretary, Rani Management Transport Corporation Ltd. reported in LLN 2010, 703 Madras High Court and in the case of law of Executive Engineer V/s A.D. Makrani LLN 2010, 812 Gujarat High Court.

(11) The learned counsel for the second party has further cited case law reported in 2011(V) LLN 689 (HP) the case of State of Himachal Pradesh and another V/s Kapil Dev on point of Section 25-F, 25-G & 25-H and also cited the case law of Jharkhand High Court reported in 2011(5) LLN 692 Jharkhand the case of Management of Bokaro Steel Plant V/s State of Jharkhand and another. From going through the case law cited on behalf of the second party workman it is obvious that the second party workman was not engaged/temporarily appointed on permanent vacant post admittedly no recruitment rule was followed in engaging the second party workman as daily rated labourer. Rather from the materials on the record it appears that her appointment was intermittently as daily rated wager on requirement of work. It is also not a case of the second party workman that after her oral termination from 01-08-1996 a daily rated wager junior to her was absorbed in permanent employment or even that after her alleged termination another daily rated worker was engaged in her place so there is no case as to violation of provision of Section 25 (G) and 25 (H) of the ID Act. As per case law relied upon 2011(5) LLN 689 is based on the charge of absence without leave or permission regarding unauthorized absence from duty followed by Disciplinary proceedings against workman, so this case law is not applicable, in the instant case to support the second party workman. The learned counsel for the second party has further cited a case law reported in 2009 (3) LLN 603 SC on point of enhancement of compensation by the Apex Court. In this case daily rated labourer was terminated whereas the Labour Court awarded compensation in lieu of reinstatement of services, he has also relied upon a case law reported in 2008 (4) LLN 612 SCC the case of Talwara Cooperative Credit and Service Society Ltd. and Sushil Kumar. This case law is based upon Section 11 A and 25 (F). In the given case law respondent was a clerk in the appellant society was terminated as allegedly the appellant society was running into losses wherein instead of reinstatement compensation was granted to the terminated workman.

(12) On the other hand Shri B.M. Joshi, Learned counsel for the first party has relied upon the case law of Karan Singh V/s Executive Engineer, Haryana State Marketing Board reported in 2007 (4) LLN 960. On point of Section 10 (4) and 25 (F) of ID Act wherein the workman instead of reinstatement was allowed compensation towards full and final settlement. He also relied upon the case law of Ghaziabad Development Authority and another V/s Ashok Kumar and another 2008 (2) page 51 SC wherein instead of reinstatement compensation was granted in accordance with completed year of services or in part thereof. He has

also relied upon a case law of Bata India Ltd. and Fourth Industrial Tribunal, West Bengal and others reported in 2010 (1) LLJ 431 (Cal.). In the given case law workman was a salesman on daily wages, he was terminated from the service. The Industrial Tribunal passed an award directing his reinstatement with back wages but it was held by the Hon'ble High Court that workman worked on daily wages for a little more than a year and so relief of reinstatement was not to be granted automatically on termination being found illegal, compensation in lieu of reinstatement would be a proper relief. It has been pointed out by the learned counsel for the first party that this judgment of the Calcutta High Court is also based upon the case law of Senior Superintendent Telegraph (Traffic) Bhopal V/s. Santosh Kumar Seal 2010 (III) LLJ 600 SC. The learned counsel has also relied upon the case law of State of U.P. V/s. Presiding Officer, Labour Court (1st) U.P., Kanpur and another reported in 2011 LLR 216 wherein it has been held that non-compliance of provisions of section 25F of the Industrial Disputes Act providing for payment retrenchment compensation at the time of termination will not be tenable since the workman was daily-wager, hence the award directing reinstatement with full back-wages is to be set aside. He has also relied upon a case law of Nepal S/o. Sh. Khichhu Ram and Presiding Officer, Labour Court-III, Faridabad and Another reported in 2011 (2) LLJ 80 (P & H) wherein it was held that the termination of workman from service was in violation of Section 25 (F) of the ID Act, 1947 but he was entitled only to compensation in lieu of reinstatement. Lastly the learned counsel for the first party had relied upon the case law of Senior Superintendent (Traffic) Bhopal V/s. Santosh Kumar Seal wherein the Hon'ble Apex Court has held that the relief of reinstatement and back wages to the workman who work hardly for 2 or 3 years cannot be said to be justified and instead of monetary compensation could subsurve the ends of justice.

(13) After going through the case laws cited on behalf of the second party workman on one hand and case laws cited on behalf of the first party on another hand, I am of the considered view that the second party workman Smt. Muktaben P. Gohel was a daily rated wager and so the second party workman cannot claim for his reinstatement with full back wages or the even part of the back wages, rather in view of the recent case law of the Hon'ble Apex Court in the case law of Senior Superintendent (Traffic) Bhopal V/s. Santosh Kumar Seal that has also been follow in the subsequent case laws cited on behalf of the first party, the second party workman as matter of right is not entitled for his reinstatement even he completed 240 days of work in one calendar year. Admittedly in one calendar year 1996. So, if retrenchment compensation or notice pay under section 25 (F) was not given to her by the first party prior to her oral termination w.e.f. 01.08.1996, she is not entitled for her reinstatement with any part of back wages since she has completed 240 days of work in a calendar year. So, she is entitled to get a lumpsum compensation of Rs. 10,000/- which will meet the ends of justice. This issue is decided accordingly.

(14) Issue Nos. I, II & V

In view of the findings given to issues No.s III and IV in the foregoings, I further find and hold that the reference is maintainable and that workman has valid cause of action to raise Industrial Dispute and that he is entitled for a lumpsum compensation of Rs. 10,000/-.

This reference is allowed in part on contest with cost of Rs. 1000/-

The first party is directed to pay the compensation of Rs. 10, 000/- with litigation cost of Rs. 1000 within 60 days of this award failing which the amount of compensation will carry interest @ 9 % per annum.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2012

का.आ.3032.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गो एयरलाइन्स प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम/न्यायालय, नं. 1, नई दिल्ली के पंचाट (आई डी संख्या 151/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/09/2012 को प्राप्त हुआ था।

[सं. एल-11012/50/2009-आई आर (सी एम-I]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 5th September, 2012

S.O. 3032.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between the management of Go Airlines Pvt. Ltd. and their workmen, received by the Central Government on 05/09/2012.

[No. L-11012/50/2009-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL No. 1, KARKARDOOMA COURTS COMPLEX; DELHI

I.D. No. 151/2011.

Shri Sanjay S/o Sh. Sadhu Ram,
Airport Employees Union, 3
V.P. House, Rafi Marg,
New Delhi-110001. ... Workman

Versus

1. The General Manager (HR)
   Go Airlines Pvt. Ltd.
   J.N. Herdia Marg, Ballard Estate,
   Mumbai-400001.
2. The Base Incharge,
   Go Airlines Pvt. Ltd.,
   Delhi Regional Officer,
   Terminal-I, IGI Airport,
   New Delhi-110001 ... Management

AWARD

A constructual employee joined services of Go Airlines (India) Pvt. Ltd. (herein after referred to as the Airlines) on 24-10-2007 as a driver. He was engaged for a period of six months. His contract was extended for another period of six months. His services were dispensed with on 24-10-2008. He raised a demand on the Airlines for reinstatement of his services. When the Airlines did not respond to his demand, he raised an industrial dispute before the Conciliation Officer. Since conciliation procedings failed, the appropriate Government referred the dispute for adjudication to the Central Government Industrial Tribunal No. 2, New Delhi, vide order No. L-11012/50/2009-IR (CM-I), New Delhi, dated 22-9-2009, with following terms of reference:

> "(i) Whether the action of the management of M/s. Go Airlines (India) Pvt. Ltd. as claimed by the union in terminating the services of Shri Sanjay S/o Sadhu Ram, Driver w.e.f. 16-10-2008 retrenchment is justified and legal? (ii) To what relief is the concerned workman entitled. ?"

2. In its order reference, the appropriate Government directed the claimant, namely, Shri Sanjay to file his claim statement before the Tribunal within a period of fifteen days of the receipt of the reference order. Despite the command, so given, he opted not to file his claim statement before the Tribunal.

3. Notice was sent to the claimant on 16-11-2009 calling upon to file his claim statement on 30-12-2009. When claim statement was not filed, a notice by registered post was sent on 9-6-2010 commanding him to file his claim statement on 30-8-2010. Another notice by registered post was sent on 11-11-2010, impressing upon him to file his claim statement on 7-12-10. Despite service of notices, referred above, no claim statement was filed.

4. Vide order No. Z-22019/6/2007-IR (C-II) dated 30th March, 2011, the matter was transferred to this Tribunal by the appropriate Government, while using its powers under sub-section (1) of Section 33-B of the Industrial Disputes Act, 1947 (in short the Act).

5. Ater receipt of the matter on transfer, notice by registered post was sent to the claimant calling upon him to file his claim statement on 7-7-2011. Neither postal article was received back nor any one appeared on behalf of the claimant. Every presumption lies in favour of the fact that the postal authorities delivered the notice, sent by the Tribunal, to the claimant. Despite service of the notice, no claim statement was filed by the claimant.

6. The Airlines was directed to file its written statement/ response to the reference order. Accordingly, written statement was filed by the Airlines, on 2.8.2011, supported by the documents. It emerged from the record that the claimant was first appointed for a period of six months by the Airlines on 24-10-07. His contract of service was extended upto 24-10-2008. Relevant clauses of his appointment letter are extracted thus:

> "1. Your contract will commence on October 24, 2007. The contract period will be of 6 months duration. After completion of six months period the contract will come to an end automatically. Depending upon availability of vacancies & subject to your satisfactory performance, we may offer permanent employment thereafter".
>
> 4. During the contract period, your appointment as a Loader/Driver is liable for termination at any time during this period without any notice and/or assigning any reason whatsoever".

7. As emerges out of record, contract of service of Shri Sanjay was extended upto 24.10.2008. Extension of contract of service was for another period of six months. His services were dispensed with on 24.10.2008 in terms of stipulation contained in his letter of appointment. Question for consideration comes as to whether the act of the Airlines amounts to retrenchment. For an answer, definition of the term is to be construed. Clause (oo) of Section 2 of the Act defines the term retrenchment. For sake of convenience, the said definition is as extracted thus:

> "2(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include.
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

8. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production) Agencies (Pvt.) Ltd. [1979 (I) LLJ 1) and Mahabir 1979 (II) LLJ 363].

9. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. , Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of Section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh [(1990 (1) LLJ. 443)].

10. On review of law laid by the Apex Court and various High Courts, a single judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of Section 2 of the Act:

"(i) that the provisions of Section 2(oo)(bb) are to be construed benevolently in favour of the workman,

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under Section 2(oo)(bb),

(iii) that the provisions of Section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non-applicability of Section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

11. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service, falling within the ambit of definition of retrenchment. On compliance of the requirements of Section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

12. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of Section 2(oo) of the Act, in C.M.Venugopal [1994 (1) LLJ 597]. As per fact of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

13. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of Section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work".

14. Above legal position was reiterated by the Apex Court in Anil Bapurao Kanase [1997 (10) S.C.C. 599] wherein it was noted as follows:

"3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28-3-1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. V. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".

15. In Harmohinder Singh [2001 (5) S.C.C. 540] an employee was appointed as a salesman by kharga canteen on 1-6-74 and subsequently as a cashier on 9-8-75. The Letter of appointment and Standing Orders, inter alia, provided that his served could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30-6-1989. Relying precedent in Uptron India Ltd. [1998 (6) S.C.C 538] the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled principles of natural justice are not applicable where termination takes place on expiry of contract of service.

16. In Batala Coop. Sugar Mills Ltd. [2005 (8)S.C.C. 481] an employee was engaged on casual basis on daily wages for specific work and for a specific period. He was engaged on 1-4-1986 and worked up to 12-2-1994. The Labour Court concluded that termination of his services was violative of provisions of Section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapuro Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court cannot be maintained.

17. The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8-1-88 to 29-2-88. His services were extend from time to time and finally dispensed with in june 1989. The Suprem Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of Section 2 (oo) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar [2003 (II) LLJ 359] has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts Section 25 F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and Kishan Chand Samal were found to be relating to fixed term of appointment.

18. In BSES Yamuna Power Ltd. (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29-9-89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20-9-90. No further extension was given and his services were dispensed with on 20-9-90. On consideration of facts and law High Court of Delhi has observed thus:

"....In the present case, the respondent was appointed as a copyist for totaling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed

without any regular process of appointment, purely casual and on temporary basis for specific work of totaling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under Section 2(oo) (bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment."

19. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukala (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of Section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of Section 2 (oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M.Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of Section 2 (oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the case of Sh. Sanjay.

20. As detailed by the Airlines in its response to the reference order, services of Shri Sanjay were dispensed with in terms of stipulation contained in his contract of employment. Action of the Airlines does not amout to retrenchment, being covered by exemption enacted by sub-clause (bb) of clause (oo) of Section 2 of the Act. When act of the Airlines, in terminating his services, does not amount to retrenchment, Shri Sanjay cannot question it. Legality and justifiability of the act of the Airlines cannot be questioned within the parameters of Section 25-F, 25-G, and 25-H of the Act, since termination of services of Shri Sanjay does not amout to retrenchment. Shri Sanjay is not entitled to any relief. An award is, accordingly, passed. It be sent to appropriate Government for publication.

Dated 14-8-2012 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2012

का.आ.3033.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई के पचाट (संदर्भ संख्या 3/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-09-2012 प्राप्त हुआ था।

[सं. एल-12012/196/2008-आई.आर.(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 5th September, 2012

S.O.3033.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 5-09-2012

[No. L-12012/196/2008-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

JUSTICE G.S.SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/3 OF 2010

Parties: Employers in relation to the management of State Bank of India

And

Their workman (N.B. Patel)

Appearances:

For the Management : Shri Nadkarni, Adv.
For the workman : Shri M.B. Anchan, Adv.
State : Maharashtra

Mumbai, dated the 14th day of June, 2012.

AWARD PART-I

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

"Whether the action of the management of State Bank of India, Mumbai in dismissing Shri N.B. Patel, Special Assistant from service by imposing the punishment of dismissal from service without notice vide order dated 22-6-2007 is justified, proper and in proportion to the allegations of charges of misconduct? If not, to what relief the workman is entitled to and from which date ?"

According to the statement of claim filed by the workman N.B. Patel, the workman joined State Bank of India (hereinafter referred to as the Bank) as a Clerk/Cashier on 6-5-1981 at the Central Office, IOA, Worli, Mumbai. He was promoted as Senior Assistant w.e.f. 1-4-1999 and was transferred to Malad West Branch. He was further promoted as Special Assistant w.e.f. 1-8-2004 and was posted at Kandivali West Branch. He was served with a chargesheet dt. 21-8-2006 with the allegations that while working as Senior Assistant at Malad West Branch he fraudulently debited amounts from (i) S.B. A/c No. 010240769908 of Smt. Rohini Barua, Pushpam Barua and others (ii) from S.B. A/c No. 010240769920 of Smt. Bina Barua, (iii) from S.B. A/c. No. 010240838920 of Rakesh Patel and (iv) S.B.A/c. No. 010240800452 of Shashikant R. Patel without preparing vouchers and borrowed Rs. 30,000 each from Chembur Nagrik Sahakari Bank Limited, Chembur Branch and from Samarth Ravhuveer Sahakari Pat Sansthan, Mumbai, A departmental enquiry was held against him and the Enquiry Officer held that all the charges stood proved except charge no. 1b. which was partly proved. It has been stated in the statement of claim that the enquiry was held against the principles of natural justice. The Bank failed to supply to him the information and the documents as mentioned in para no. 4 of the statement of claim. The Bank thus denied him opportunity to defend properly in the enquiry. The Enquiry Officer was biased and his findings are perverse. The Enquiry Officer conducted the enquiry without original documents. The charge of borrowing of Rs. 30,000 each without obtaining specific permission from the Competent Authority was based on the fabricated documents. The charges against him are baseless. The complainants were not produced in the enquiry. The Enquiry Officer did not analyse the evidence and as such his findings are perverse. The punishment of dismissal awarded to him is disproportionate to the alleged misconduct. The workman has, therefore, prayed that he be reinstated in service with full back wages and continuity of service.

According to the written statement filed by the Bank it received a complaint dt 8-2-2006 from Smt. Pushpa Barua who was maintaining S.B. A/c. No. 10240769908 with the Malad West Branch of Bank wherein it was stated that a sum of Rs. 60,000 was withdrawn from her account by someone on different dates. The Bank again received a complaint dt. 10-2-2006 from Smt. Bina Barua about fraudulent withdrawal of Rs. 2,500 from her S.B. A/c No. 010240769920 on 4-8-2005. The Bank received yet another complaint on 27-2-2006 from Rakesh Patel who had savings bank account no. 010240838920 at the Malad Branch of the Bank wherein it was stated that a sum of Rs. 18,300 was fraudulently withdrawn from his account on different dates. Pursuant to the receipt of the above complaints a preliminary investigation was carried out which revealed that the workman while working at the Malad Branch as Senior Assistant fraudulently transferred the amounts from customers accounts and credited the same to various accounts maintained by him at the Branch. The fraud was committed by simply punching the entries directly into the system without preparing any voucher. During the course of preliminary investigation the workman confessed his guilt. The workman stated that he committed fraud as he was in financial difficulties. According to the written statement the workman was enjoying personal loan overdraft limit of Rs. 3.00 lakhs and another overdraft of Rs. 0.78 lakh against the security of National Savings Certificate. The workman had also availed the loan from SBI Employees Co-operative Credit Society, Mumbai. The Bank also received communications from Chembur Nagarik Sahakari Bank Ltd and Samarth Raghuveer Sahakari Pat Sanstha Ltd, Mumbai that the workman had borrowed Rs. 30,000 each from the said institutions. The workman was then placed under suspension. On 14-2-2006 the Bank issued a letter dt. 1-6-2006 to the workman calling upon him to submit his explanation. The reply dt. 7-7-2006 of the workman was not found acceptable. The Disciplinary Authority issued chargesheet dt 21-8-2006. C.M. Kulkarni, Officer SMGS-IV was appointed as Enquiry Officer. The workman availed the services of Rajan N. Kamble as his defence representative. The Enquiry Officer submitted his report on 28-4-2007. A copy of the enquiry report was given to the workman. The Disciplinary Authority concurred with the findings of the Enquiry Officer and tentatively proposed the punishment of dismissal without notice in terms of clause 6(a) of the Memorandum of Settlement dt. 10-4-2002. The workman was asked to show cause as to why the proposed punishment should not be imported on him. The workman submitted his reply dt. 4-6-2007 and also availed the opportunity of personal hearing on 12-6-2007. After considering the entire material relating to the enquiry the Disciplinary Authority by order dt. 22-6-2007 imposed the punishment of dismissal without notice. The workman preferred an appeal dt. 30-7-2007. The Appellate Authority granted personal hearing to the workman on 4-10-2007. After going through the entire record of the case the Appellate Authority passed his order dt. 9-2-2008 and rejected the appeal. The workman thereafter raised this dispute. According to the written statement the charges against the workman are fully proved on the basis of the documents and oral evidence led by the Bank at the enquiry. The workman did not produce any evidence in defence. The enquiry was held in accordance with the principles of natural justice and the workman was given fair opportunity to defend himself. The punishment of dismissal from service without notice imposed on the workman is justified, proper and in proportion to the charges proved against the workman.

The workman has filed rejoinder wherein he has reiterated the stand taken in the statement of claim.

Following issues have been framed :

(1) Whether the enquiry held against the second party workman is fair and proper?

(2) Whether the findings of the Enquiry Officer are perverse?

(3) Whether the punishment passed against the second party workman of dismissal from service is just, fair and in proportion to the allegations of charges of misconduct?

(4) Relief?

Issues nos. 1 and 2 have to be decided first and to prove these two issues the workman has filed his affidavit and he has been cross examined by learned counsel of the Bank whereas the Bank has filed affidavit of C.M. Kulkarni who has been cross-examined by learned counsel for the workman.

Heard Shri Anchan learned counsel for the workman and Shri Nadkarni learned counsel for the Bank.

ISSUE NO. 1 :

It is clear from the enquiry proceedings that the workman participated in the enquiry and he has been given full opportunity to defend himself.

Learned Counsel for the workman has argued that original documents were not produced and copies of certain documents were not given to the workman as such principles of natural justice have been violated.

In the minutes of the enquiry proceedings dated 10-10-2006 it has been noted that the workman asked for originals whereupon the Enquiry Officer directed the workman to visit Malad West Branch on 16-10-2006 at about 11.30 a.m. for verification and Asstt.General Manager of the Branch was apprised telephonically in this regard. In the minutes of the enquiry proceedings dt.10-11-2006 it has been noted that the workman verified. It is thus clear that the workman was given full access to the original documents. Moreover, it is well settled position now that the Disciplinary Authority or Enquiry Officer are not Courts and, therefore, the strict procedures that are to be followed in Courts may not be strictly adhered to in industrial disputes before Tribunals. In a departmental proceeding strict proof by legal evidence may not be necessary as the provisions of the Evidence Act per se are not applicable in industrial adjudication It was, therefore, not necessary to produce the originals.

In the minutes of the proceedings dt.23-11-2006 the workman said yes to the question of the Enquiry Officer that whether he received the complete set of exhibits in the case and studied and verified the same and then the workman went on to offer his comments regarding each of those documents. Moreover, it is the duty of the workman to point out how each and every document is relevant to the charges or to the enquiry being held against him and where and how non-supply has prejudiced his case. The documents which have not been relied upon are not required to be supplied to the workman. The documents which are required to be supplied are only those whereupon reliance has been placed by the first party. Non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not cause any prejudice to the workman. Learned Counsel for the workman has not named any document the non-production of which has caused prejudice to the workman.

It is well settled that principles of natural justice are not embodied rules. To sustain the allegation of violation of principles of natural justice one must establish that prejudice has been caused to him for non-observance of principles of natural justice. In this case no prejudice is shown to have been caused to the workman.

I thus do not find any force in the argument of learned counsel for the workman and I find that the enquiry held against the second party workman is fair and proper.

Issue No. 1 is decided against the workman.

ISSUE NO. 2: Learned Counsel for the workman has contended that the customers from whose accounts the money has been debited have not been produced and therefore, without their evidence the findings of the Enquiry Officer are perverse.

The customer of the bank need not be involved in a domestic enquiry for healthy relationship between the banker and the customer. When sufficient evidence is produced to conclude one way or the other, the evidence not produced will not be of any significance. Voucher verification reports and statement of account of the workman are sufficient evidence to prove the charge no.1 levelled against the workman.

As regards charge no.2 it has been pleaded in the statement of claim that the documents are fabricated. If the workman alleges that documents are fabricated then it is for him to prove the allegation but the workman in this case has not produced any evidence whatsoever to prove that the documents were fabricated.

It is not open to the Tribunal to re-appreciate the findings of the Enquiry Officer and on that basis arrive at a conclusion different from that of the Enquiry Officer. To put it in another way it is not within the scope of powers of the Tribunal to sit as appellate forum over the findings of the Enquiry Officer.

After going through the entire proceedings relating to the enquiry against the workman I do not think that the findings of the Enquiry Officer are perverse.

Issue no.2 is, therefore decided against the workman.

The reference will go on for hearing for Part-II Award for which put up on 6th July 2012.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2012

का.आ.3034 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, दिल्ली के पंचाट (संदर्भ संख्या 196/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-9-2012 प्राप्त हुआ था।

[सं. एल-12012/482/98-आई.आर.(बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 5th September, 2012

S.O. 3034.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.196/2011) of the Cent. Govt. Indus.Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 05-09-2012.

[No. L-12012/482/98-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX DELHI

I.D. No. 196/2011

Smt. Nirmal Kanbid
C/o Sh. J.N. Kapoor,
33-34, Bank Enclave, Ring Road,
Rajouri Garden, New Delhi-27. ...Workman

Versus

The Asstt. General Manager,
State Bank of India,
Region I, Zonal Office,
148, Civil Lines,
Bareilly (U.P.) 243001. ... Management

AWARD

A clerk working in C.A.R.I. branch, Bareilly, State Bank of India (in short the bank) proceeded on maternity leave in October, 89. Her leaves came to an end and she was to report for her duties on 16-01-1990. She opted not to report for her duties. In those days, she was residing at 75, YS Parmar University, Solan, H.P., where her husband was working as Associate Professor. Letters/telegrams dated 20-05-1990, 24-08-1990 and 12-09-1990 were sent to her calling upon her to join her duties. Ultimately, notice dated 17-01-1991 was sent to her detailing therein that in case she fails to join her duties within 30 days of the said notice, she would be deemed to have voluntarily abandoned her services. This notice could evoke no response from her. Consequently, the bank treated her voluntarily deemed to have retired from service with effect from 17-2-91. After a long gap of time in March 98, she raised an industrial dispute before the Conciliation Officer. Bank resisted her claim and as such conciliation proceedings failed. On consideration of failure report, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/482/98-IR(B-II), New Delhi dated 17-03-1999, with the following terms:

> "Whether the action of the management of State Bank of India in terminating the services of Smt. Nirmal Kanbid, ex-clerk by treating her unauthorized absence as voluntary vacation from her bank service with effect from 17-02-1991 is just, fair and legal? If not, what relief she is entitled to and from what date ?"

2. Claim statement was filed by the clerk, namely, Smt. Nirmal Kanbid pleading therein that she joined services of the bank on 09-10-1978. She was transferred to Ijjat Nagar, Bareilly, branch of the bank in November, 1983 and lastly to C.A.R.I., Bareilly branch in March 1984. She proceeded on maternity leave with effect from 14-10-1989. She gave birth to a male child on 16-10-1989 at Lady Leading Hospital, Simla. Her son was suffering from "maningomylocil" from his very birth. He was operated upon on 21-05-1991 at G. B. Pant Hospital, New Delhi. Ultimately he breathed his last on 12-12-1991.

3. The claimant projects that she also suffered and remained admitted in Dr. Ram Manohar Lohia Hospital, New Delhi, from 21-10-1991 to 16-11-1991. She was also operated on 29-10-1991 and remained confined to bed for restoration of her health. She fully recovered in first week of May, 92 and reported at C.A.R.I., Bareilly branch of the bank on 09-05-1992 to join her duties. However, the branch manager did not allow her to resume her duties, saying that her services have been terminated. She was shocked to note that her services were done away without asking for any explanation or service of charge sheet on her. No domestic enquiry was conducted and the bank violated provisions of Para 521 of Shastry Award. She was entitled to other leaves and could combine those leaves with her maternity leave. She remained on leave for reasons beyond her control. Neither her leave applications were granted nor refused by the bank. Action of the bank is colourable exercise of its powers. It amounts to retrenchement under law. Bank had not given notice or pay in lieu thereof, besides retrenchement compensation. She cannot be deemed to have voluntarily retired from service. She never submitted her resignation. Her absence from duties amounts to misconduct for which maximum punishment of stoppage of increment for a period not exceeding six months can be awarded. She claims that an award may be passed reinstating her in service of the bank with continuity and full back wages.

4. Bank resisted her claim pleading that she ceased to be an employee of the bank in February, 1991, while she approached the Conciliation Officer in March, 1998. She presented a stale claim and is not entitled to any indulgence. Bank presents that the claimant was staying at Solan with her husband where he was employed as a Associate Professor. She absented herself without information with effect from 16-10-1989. However, vide application dated 28-11-1989, she sought maternity leaves, which leaves expired on 16-10-1990. No leave was granted to her thereafter. She was supposed to report for her duties after expiry of her maternity leaves. She subsequently sent a telegram seeking extraordinary leaves upto 31-07-1990. Vide letter dated 24-08-1990, she was informed that she had been absenting herself unauthorizedly and should report for duties immediately. Letters dated 25-05-1990, 24-08-1990 and 12-09-1990 were sent to her but to no avail. Ultimately notice dated 17-01-1992 was sent to her advising her to report for duties with a period of 30 days from the date of the notice, failing which she would be deemed to have voluntarily abandoned her services. Neither she reported for duties nor gave any explanation for her unauthorized absence. She voluntarily ceased to be an employee of the bank in terms of Clause XVII of the Fifth Bipartite Settlement. Her services were not terminated by the bank.

5. Bank projects that it was not a case of serving any charge sheet or proceeding with a domestic enquiry. From her conduct of remaining absent in an unauthorized manner, she made it well known that she had no intention of joining her duties. In case of voluntary cessation of service, no domestic enquiry is needed. It does not amount to retrenchment within the meaning of clause (oo) Section 2 of the Industrial Disputes Act, 1947 (in short the Act). Provisions of Section 25F of the Act had not come into play. It was not a case where notice or pay in lieu thereof, besides retrenchment compensation was to be given. Bank asserts that the claim put forward by Smt. Kanbid may be discarded and an award may be passed in its favour.

6. In rejoinder, claimant reiterates facts pleaded by her in the claim statement.

7. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi dated 11-02-2008, the appropriate Government transferred this case to Central Government Industrial Tribunal II, New Delhi, for adjudication. Case was re-transferred to this Tribunal, vide order No. L-12012/482/98-IR(B-II), New Delhi, for adjudication.

8. Smt. Nirmal Kanbid and Shri J.N. Kapoor entered the witness box to substantiate her claim. Shri K.N. Chandola, Assistant General Manager, unfolded facts on behalf of the bank. No other witness was examined by either of the parties.

9. Arguments were heard at the bar. Shri J.N. Kapoor, authorised representative, made submissions on behalf of the claimant. Shri J. Buther, authorised representative, advanced arguments on behalf of the bank. I have given by careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on the issues involved in the controversy are as follows:

10. In her affidavit dated 04-04-2007, tendered as evidence, Smt. Kanbid swears that she proceeded on maternity leave with effect from 14-10-1989. She gave birth to a male child on 16-10-1989 at Lady Leading Hospital, Simla. Unfortunately, her child was suffering from "maningomylocil" from very date of his birth at lumbascral region. Therefore, she had to remain constantly with her child and run from one hospital to another for his treatment. Her son was operated upon in GB Pant Hospital, New Delhi, on 21-05-1991. She also suffered and remained admitted at Dr. Ram Manohar Lohia Hospital, New Delhi, from 28-10-1991 to 16-11-1991. On 29-10-1991, she was operated upon and remained confined to bed for restoration of her health. She fully recovered in first week of May, 1992 and immediately reported for her duties at C.A.R.I. branch, Bareilly, on 09-05-1992. However, she was not allowed to resume her duties. She was told that her services have been terminated by the bank. During course of her cross examination, she concedes that she remained on maternity leave upto 15-01-1990. She also admits that she had not joined her duties since 16-1-1990. She does not dispute that she had not made any attempt to find out as to whether the bank had granted any leave to her, after expiry of her maternity leaves.

11. Shri K.N. Chandola unfolds in his affidavit Ex. MW1/A, tendered as evidence, that the claimant remained absent from her duties from 16-01-1990 and onwards. After expiry of her period of maternity leave, she did not resume her duties. No leave was granted to her from 16-01-1990 onwards. Vide letter dated 20-05-1990, she was informed that she was absenting herself unauthorizedly and called upon to report for her duties. She did not inform the bank about her illness. She never furnished any medical certificate. For the first time, the branch manager received a telegram from her seeking leave upto 31-07-1990. Vide telegram and letter dated 24-08-1990, she was informed that she was absenting from her duties unauthorizedly. She did not report for duties and letters dated 20-05-1990, 24-09-1990 and 17-01-1991 were sent to her.

12. Out of facts unfolded by Smt. Kanbid and those detailed by Shri Chandola, it came to light that the claimant proceeded on maternity leaves on 14-10-1989. She remained on maternity leaves upto 15-01-1990. She did not report for duties on 16-01-1990. No intimation or application was sent by her to the bank informing that her son was not well and her leaves may be extended. At no point of time, she informed her superiors that she was hospitalized and operated upon for her ailment. Only once, she sent a telegram to the bank seeking extension of her

leaves upto 31-07-1990, which telegram was responded to and she was informed that she was absenting herself from duties unauthorizedly. Therefore, out of these facts, it is crystal clear that the claimant overstayed her maternity leave and never bothered to inform her superiors reasons of her absence. Various letters, written to her calling her to resume duties, could evoke no response. As projected by Shri Chandola, the bank treated her deemed to have voluntarily vacated her services with effect from 17-02-1991.

13. Above facts highlight that from 16-01-1990 till 17-02-1991, claimant opted not to report for her duties despite various letters and notice sent by the bank. Her overstayal of sanctioned leaves for such a long period made the bank to asume that she had voluntarily abandoned her services. This act of the bank is questioned by the claimant projecting that overstayal of sanctioned leave amounts to minor misconduct, for which punishment of stoppage of increment for a period not longer that six months can be awarded. Her contention in that regard is dispelled by the bank. Therefore, question for consideration would be as to whether overstayal of sanctioned leave for such a long period amounts to 'minor misconduct' or 'voluntary abandonment of service'. For an answer, the Tribunal had to look into the contents of the Bipartite settlement dated 19-10-1966.

14. Bipartite Settlement dated 19-10-1966 coins "gross misconducts" as well as "minor misconducts". Gross misconducts are detailed in para 19.5 of the said settlement. For the sake of convenience, those misconducts are extracted thus:

"19.5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) engaging in any trade or business outside the scope of his duties except with the written permisson of the bank;

(b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interest of the bank;

(c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;

(d) wilful damage or attempt to cause damage to the property of the bank or any of its customers;

(e) wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;

(f) habitual doing of any act which amounts to 'minor misconduct' as defined below, 'habitual' meaning a cource of action taken or persisted notwithstanding that at least on three previous occasions, censure or warning have been administered or an adverse remark has been entered against him;

(g) wilful slowing down in performance of work;

(h) hambling or betting on the premises of the bank ;

(i) speculation in stocks, shares, securities or any other commodity whether on his account or that of any other person;

(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

(k) giving or taking a bride or illegal gratification from a customer or an employee of the bank;

(l) abetment or instigation of any of the acts or omissions above mentioned".

15. An employee found guilty of gross misconduct may be awarded severe punishment depending upon the gravity of his act. Punishment which can be awarded to an employee for gross misconduct, detailed in para 19.6 of the said settlement, are also extracted thus:

"19.6 An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) be warned or censured, or have an adverse remark entered against him; or

(c) be find; or

(d) have his increment stopped; or

(e) have his misconduct condoned or merely discharged".

16. Misconducts which do not fall within the ambit of gross misconduct are defined to mean minor misconducts. Series of misconducts, which are termed as minor misconducts are detailed as under:

"19.7 By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

(b) unpunctual or irregular attendance;

(c) neglect of work, negligence in performing duties;

(d) branch of any rule of business of the bank or instruction for the running of any department;

(e) committing nuisance on the premises of the bank;

(f) entering or leaving the premises of the bank except for an entrance provided for the purpose;

(g) attempt to collect or collecting moneys within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;

(h) holding or attempting to hold or attending any meeting on the premises of the bank without the provisions permission of the management or except in accordance with the provisions of any rule or law for the time being in force;

(i) canvassing for union membership or collection of union dues or subscription within the premises of the bank without the previous permission of the management or except in accordance with the provision of any rule or law for the time being in force;

(j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank, unseemly or unsatisfactory behaviour while on duty;

(k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;

(l) incurring debts to an extent considered by the management as excessive".

17. For minor misconducts, punishment which can be awarded to an employee are detailed in para 19.8 of the settlement,which are also detailed hereinunder:

"19.8 An employee found guilty of minor misconduct may:

(a) be warned or censured; or

(b) have an adverse remark entered against him; or

(c) have his increments stopped for a period not longer than six months".

18. Whether act/misconduct of the claimant amounts to minor miconduct, when she overstayed sanctioned leave for a long period? Admittedly, such an act has been project as minor misconduct under Clause 19.7 of the settlement, referred above. On the other hand settlement dated 14.04.1989 (commonly known as V Bipartite settlement) projects that when an employee absent himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken up employment in India or when the bank is reasonably satisfied that he has no intention to join duties, bank may at any time thereafter give notice calling upon him to report for duty within 30 days of the notice and on his failure to report for duty, the employee would be deemed to have voluntarily retired from bank's services on expiry of the said notice. For the sake of convenience, provision of V Bipartite settlement are extracted thus:

"XVII Voluntary Cessation of Employment by the Employees.

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following :

(a) when an employee absent himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating *interalia* the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(b) Where an employee goes abroad and absents himself for a period of 150 or more consecutive days without submitting any application for leave, or for its extension or without any leave to his credit or beyond period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment outside India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating

interalia the grounds for coming to the conclusion that the employee has no intenstion of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submiting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service.

(c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment".

19. Thus, it is evident that overstayal of sanctioned leave can be treated as minor misconduct as well as when an employee fails to report for duty within a period of 30 days after service of notice in that regard, it may be treated as voluntary abandonment of service. Therefore, question would be as to under what circumstances overstayal of sanctioned leave would be considered as minor misconduct and when it would be considered as voluntary abandonment of services? Such proposition was raised before the Apex Court in Jeevan lal (1961 (2) FLR 537) wherein the Court was called upon to construe as to what continuous absence in the context of gratuity scheme would mean. It was ruled therein that if an employee continues to be absent from duty without obtaining leave and in an unauthorized manner for such a long period of time, then inference may reasonably be drawn from such long absence that by his absence he is absenting from service and long unauthorized absence may ultimately be held to cause break in continuity of service. It was also observed therein that it was always to be question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity in service for the requisite period or not. The case where long unauthorized absence gives rise to an inference that such service is intended to be abandoned by the employee is of-course different.

20. In Shahoodul Haq (AIR 1974 SC 1986) the Apex Court laid down law to the same effect. It would be expedient to reproduce the observations made by the Apex Court, which are detailed as under:

> "The undenied and undeniable fact that the appellant had actually abandoned his post or duty for an exceedingly long period, without sufficient grounds for his absence, is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against him. It would only prolong his agony. On the view we have adopted on the facts of this case, it is not necessary to consider the further question whether any notice for termination of services was necessary or duly given on the assumption that he was not punished. We do not think that there is any question involved in this case which could justify an interference by us."

21. In Venkatiah (1963 (7) FLR 343), the Apex Court was dealing with the same proposition. Observations made therein are relevant for consideration, which are reproduced thus:

> "It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an influence to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf".

22. In Syndicate Bank (2000 (85) FLR 807) and Manzur Ali Khan (2001 (91) FLR 28), sharing the same view it was announced that if a person absents himself beyond the prescribed period for such leave of any kind can be granted, he should be treated to have resigned and ceased to be in service. It was concluded therein that in such cases, there was no need to hold an enquiry or to give any notice as it would amount to useless formalities.

23. In the light of the above proposition of law, it would be expedient to know what the words 'abandon' and 'abandonment' mean? Ordinarily, the word 'abandon' does not mean 'merely leave' but 'leaving completely and finally. Word "abandonment" would indicate that it has a connotation of finality, which would mean relinquishment or extinguishment of a right, giving up of something

absolutely, giving up with an intent of never claiming a right or interest, to renounce or forsake utterly. In order to constitute on "abandonment" there must be a total or complete giving up of duties, so as to indicate an intention not to resume the same. Abandonment must be total and under circumstances which clearly indicate an absolute relinquishment. A failure to perform duties pertaining to an office must be with an actual or imputed intention on the part of the officer to abandon and relinquish the office.

24. Abandonment is a voluntary positive Act. A man must expressly say that he gives up his right. If he remains quiet, it cannot be said that he is forsaking his title to property or his interest therein. An office is abandoned by ceasing to perform its duties. A temporary absence is not, ordinarily sufficient to constitute an abandonment of an office. A mere absence of a workman from duty can not be treated as an abandonment of service. Abandonment or relinquishment of service is always a question of intention and normally, such an intention can not be attributed to an employee without adequate evidence is that behalf. However, the "intention" may be inferred from the acts and conduct of the party. The question as to whether the job, in fact has been abandoned or not, is a question of fact which is to be determined in the light of the surrounding circumstances of each case.

25. With above legal prelude in mind, now facts of the present controversy would be addressed to in order to ascertain whether overstayal of sanctioned leave on the part of Smt. Kanbid was minor misconduct or her intention to abandon services emerges out. As projected above, Smt. Kanbid remained on maternity leaves upto 15.01.1990. She was supposed to join her duties on 16.01.1990. she opted not to join her duties. She did not inform the bank about ill health of her son to project that she was unable to resume her duties. It emerges out of fact unfolded by Shri Chandola that letter dated 25.05.1990 was sent to her wherein it was detailed that she was absenting from her duties since January' 90. She was advised to report for her duty within 30 days of receipt of that letter. She opted not to pay any heed to the advice given by the bank. However after sometime she sends telegram detailing therein that her son was to be operated upon in PGI Chandigarh. She asked for extension of her leaves upto 31.07.1990. Thus for the first time, she asks the bank for extension of her leaves. Bank sends telegram dated 24.08.1990 in response to her above telegram calling upon her to report for duties within 3 days of the receipt thereof. She was also advised to explain reasons for her unauthorized absence. It was impressed upon her that it was an urgent matter. Receipt of this telegram has not been questioned by the claimant. She did not report for duty. She had not responded even by way of written communication. On the other hand, she went in hibernation. She neither wrote to the authorities about ailment suffered by her son and when he was to be operated upon, nor did she send medical prescription of her child, making it clear to the bank that she was in dire need of extension of leaves.

26. On 12.09.1990, bank wrote to her that no application for extension of leave was received on her behalf. She was informed that she was absent unauthorizedly, which position was highly irregular and in contravention of rules governing her service. She was called upon to report for duties within 15 days of the notice, failing, which she would deemed to have voluntarily retired from service. This notice also could evoke no response. Lastly, notice/ letter dated 17.01.1991 was sent to the lady wherein reference to letter dated 12.09.1990 was made. Bank observed that she was continuing to be absent from duty, which position was highly irregular and in contravention of rules governing her service. She was advised to report for duties within 30 days of the notice, failing which she would be deemed to have voluntarily retired from service, on expiry of the notice period. This communication also reached her hands, but she failed to respond to it also.

27. From above facts, it is apparent that once on 28-11-1989, claimant wrote to the bank for leave and maternity leaves were granted to her with effect from 14-10-1989 to 15-01-1990. Thereafter, she maintained an eerie silence. What were the reasons for such a behaviour? Her deposition spell out those reasons also. As detailed by her, she joined service of the bank on 09.10.1978 at its Rail Bhawan branch, New Delhi. In November 1983 she was transferred to Ijjat Nagar, Bareilly branch of the bank and lastly in March 84, transferred to C.A.R.I. branch, Bareilly. Therefore, it is emerging over the record that from 1983 till October 1989, when she proceeded on maternity leaves, she was posted in Bareilly, UP. Her husband was working as an Associate Professor, External Education College, YS Parmar University, Solan, HP. There is vacuum of evidence as to when she got married or when Shri Kanbid got job of Associate Professor at Solan. However, it is apparent that Shri Kanbid was there at Solan when Smt. Kanbid was working at Bareilly, UP. Long distance between the two cities made Smt. Kanbid to feel that her service with the bank was not expedient. A young bride used to miss her husband, while posted at Bareilly. Consortium of her husband was need of the hour. With this idea in mind. she travelled to Solan in October 89 without getting maternity leaves sanctioned. She wrote on 28-11-1989 and bank sanctioned maternity leaves till 15-01-1990. When she was reminded about her absence vide letter dated 20-05-1990, she wrote to the bank seeking extension of her leaves upto 31-07-1990. However, her request was not conceded to. Smt.Kanbid made up her mind to rear her child and opted not to write to the bank any further. Letters dated 24-08-1990, 12-09-1990 and 17-01-1991 fell flat on her deaf ears. As conceded by her, in her testimony, she never submitted any medical certificate to the authorities nor the same are filed before the Tribunal, to enable to

assess as to whether the lady faced hardship and was unable to report for duties. She never made any effort to enquire as to whether her leaves were extended or not. All these circumstances make it apparent that a decision was taken by the lady to stay with her husband and to bid farewell to the job. Thus it is evident that Smt. Kanbid made her intention to abandon her job well known to the authorities by her acts and conduct. Smt.Kanbid never harboured such feelings that she would join her duties with the bank. The moment she took a decision to abandon her job, shackles of service were done away.

28. Law permits her to terminate relationship of employer and employee by voluntarily submitting her resignation or automatically by not joining duty and remaining absent for a long period. Absence from duty in beginning may be termed as misconduct but when absence is for a very long period, it would amount to voluntary abandonment of service and in that eventuality, bonds of service come to an end automatically. Misconduct can be committed by an employee and not by an ex-employee, who had voluntarily abandoned his service. Therefore, by her overstayal of sanctioned leave for a longer period, Smt. Kanbid abandoned her service and became immune from applicability of clause 19.7 of the settlement dated 19-10-66. Under these circumstances, it is concluded that the contention advanced by Shri Kapoor, to the effect that her act was minor misconduct, punishable with stoppage of increment for not more than six months, is untenable.

29. Whether Bank had followed requisite procedure provided by Clause XVII of the V Bipartite Settlement? At the cost of repetition, it is said that when an employee absents himself from work for a period of 90 days or more consecutive days: (i) without submitting any application for leave; or (ii) application for extension of leave; or (iii) without any leave to his credit; or (iv) beyond period of leave sanctioned originally/subsequently; or (v) when there is satisfactory evidence that he has taken up employment in India; or (vi) when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give notice to him at his last known address calling upon him to report for duty within 30 days of the notice stating the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. It is evident that the employer shall serve a notice on the employee calling upon him to join his duties within 30 days of the notice. The employer is obliged to state the grounds for coming to the conclusion that the employee has no intention of joining duties. It is also to be detailed in the notice that in case of his failure to report for duty within 30 days of the notice or offer on explanation for his absence, and expression of intention of joining duties, he shall be deemed to have voluntarily retired from bank's service on expiry of the said notice. When contents of notice dated 17-1-91 are perused, it is clear that the bank detailed that the claimant had absented herself from duty since 16-1-90 unauthorisedly, which position was in contravention of service rules applicable to her. Spell of her long unauthorized absnece, that too without any communication from her side made her intention of not joining duties apparent and well known. Neither she joined her duties nor offered an explanation for her absence nor made her intention known to the effect that she intended to join her duties. These facts bring it to light that leaves were sanctioned in favour of the claimant upto 15-01-1990. She absented herself from reporting for her duties for a period of 90 or more consecutive days without any extension of leave. Time and again, bank wrote to her calling her to report for duties, but to no avail. In letter dated 17-01-1991, it was emphasized by the bank that her absence was highly irregular and in contravention of the service rules. Therefore, it is evident that in the notice sent to the claimant, bank detailed grounds for coming to conclusion that she had no intention of joining her duties. 30 days' time was given to the lady to report for her duty, but she had not availed that opportunity. She did not wrote to the bank making it clear that she had an intention to join her duties. Consequently, it is evident that all requirements detailed in Clause XVII of the V Bipartite settlement stood satisfied. The claimant voluntarily abandoned her services.

30. There are circumstances which give reaffirmation to these facts. The bank informed the claimant vide letter dated 27-01-1992 that she is deemed to have voluntarily abandoned her service with effect from 17-2-91. Despite that she did not come out of slumbers till March 1998. That fact bring her intention to abandon her services over the record. Though she makes a bald claim to the effect that in May 1991 she went to join her duties, but no evidence worth name was produced by her. No evidence was brought over the record even to show that in May 1991 she travelled to Barielly, U.P. Thus her claim in that regard is found to be worthless. These circumstances make it evident that she had no intention to join and abandoned her job voluntarily.

31. Whether the bank was enjoined with a duty to initiate enquiry against Smt.Kanbid for her unauthorized absence, before invoking provisions of clause 17 of 5th Bipartite Settlement ? In Suresh Chand (2007 LLR 344) contention of the workman that no domestic enquiry was conducted and termination of his services was illegal, was brushed aside and it was ruled that when a workman absents from duty without any intimation or prior permission, termination of his services without holding an enquiry will be justified. In Vijay Pal (2007 L.L.R.7) and G.T.Lad (1979 Lab.I.C. 2910) same proposition of law were laid. In Syndicate Bank (AIR 2000 S.C. 2198) the Apex Court was confronted with such a proposition, as exists in the present controversy. Workman was absent from his work place for a period of 90 days or more consecutive days. A notice

was served upon him to report for duty within 30 days of notice alongwith the grounds on which bank came to the conclusion that the workman had no intention to join his duties. The workman did not respond to that notice at all. Bank passed orders to the effect that the workman had voluntarily retired from the service of the bank. Apex Court laid that as far as principles of natural justice are concerned the court was to consider: (1) whether show cause note detailing the note of the complaint or acquisition was served, (2) whether an opportunity was there for the workman to state his case, and (3) whether the management acted in good faith and has been fair, reasonable and just. It was ruled therein that on the facts and circumstances of the case the principles of natural justice were inbuilt in the clause relating to voluntary cessation of employment and when workman had not opted to join his duties on service of notice, principles of natural justice were complied with. The law laid by the Apex Court in the precedent referred above is applicable to the case of Smt. Kanbid.

32. Whether action of the bank in treating Smt. Kanbid deemed to have voluntarily abandoned her services amount to discrimination? To project, discrimination, the claimant has examined Shri J.N. Kapoor. In his affidavit, Ex.WW2/A, tendered as evidence, Shri Kapoor swears that the bank has treated the claimant harshly by punishing her discriminately. In similar cases, bank had not terminated services of the workmen. He illustrates that Shri Naresh Kumar Sharma, Clerk, posted at Mundka branch of the bank was treated as unauthorizedly absent with effect form 30-07-1993 and his services were done away on 31-05-94. He raised an industrial dispute before the Conciliation Officer on 25-09-1998. During the course of conciliation proceedings, an agreement dated 24-1-2000 was entered into between the parties and bank agreed to reinstate Shri Sharma within 10 days of the said settlement. Shri Kapoor further details that Shri Balraj Singh, messenger, posted at Palwal branch of the bank absented himself from his duties with effect from 23-01-1988, whose services were dispensed with vide letter No.799 dated 10-09-1988. He also raised an industrial dispute, which was referred for adjudication to Central Government Industrial Tribunal, Chandigarh in April 1998. During the course of adjudication, bank entered into an agreement on 5-12-2000 and agreed to allow Shri Singh to join his duties. Facts unfolded by Shri Kapoor were not controverted during the course of his cross examination. Shri Chandola had not spoken anything on facts, referred above.

33. Out of facts unfolded by Shri Kapoor, it came to light that Shri Naresh Kumar Sharma absented himself from service of the bank from 30-07-1993 and his services were ordered to have been abandoned on 31-03-1994. Therefore, it is evident that Shri Naresh Kumar Sharma remained absent for a period of 8 months and the bank ordered that he is deemed to have voluntarily retired-Shri Balraj Singh absented himself with effect from 23-01-1988 and the bank passed order to the effect that he is deemed to have voluntarily abandoned his job with effect from 15-05-1988. Consequently, it is emerging that Shri Singh remained absent for 3 months and 22 days, when he was ordered deemed to have voluntarily abandoned his job.

34. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments, (b) promotions, (c) termination of employment, and (d) matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

35. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making in the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the defferentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

36. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to

them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

37. Now, it would be considered as to whether classification made by the bank in entering into settlement with Shri Sharma and Shri Singh are discriminatory ? Smt. Kanbid was on leave upto 15-01-1990- Thereafter, she overstayed her sanctioned leave and opted not to join her duties with the bank till 17-02-1992, the date when she was ordered deemed to have voluntarily abandoned her services. Thus, it is evident that the claimant overstayed her sanctioned have for 13 months and one day- Letters/notices were sent to the claimant on 20-05-1990, 24,08-1990, 12-09-1990 and 17-1-1991 calling upon her to join her duties, which were not responded by her. Thus, it is evident that despite opportunities granted to the claimant, she opted not to join her duties for a long 13 months, which made the bank to believe that she had voluntarily abandoned her services. Shri Naresh Kumar Sharma remained absent for a period of 8 months while Shri Balraj Singh remained absent for 3 months and 22 days only. It has not been crystallized as to whether Shri Sharma and Shri Singh over stayed sanctioned leaves or they absented without sanction of any leave. It is also not clear as to whether notices, fulfilling requirements of clause XVII of V Bipartite Settlement, were served upon them. It is also not projected that Shri Sharma and Shri Singh also not offered any explanation about their absence. Further more there is vacuum to the effect as to whether they made their intention to join duties known to the bank. Their period of absence is much lesser than the period of absence of the claimant. All these facts make it clear that they were not placed on the same pedestal on which the claimant stands. Therefore, it is apparent that cases of Shri Sharma and Shri Singh are not similar to the case of the claimant. Above factors make her case distinct and different from the aforesaid two cases. Classification can be made by the bank based upon nature of persons and time also. In view of these circumstances, I find case of Smt. Kanbid different than the cases of Shri Sharma and Shri Singh.

38. In view of reasons detailed above, I filed action of bank in treating Smt. Kanbid deemed to have voluntarily abandoned her service as just, fair and legal. She is not entitled to any relief. Her claim is brushed aside. An award is, accordingly, passed in favour of the bank and against the claimant. It be sent to appropriate Government for publication.

Dated: 09-08-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2012

का.आ.3035 .— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक/श्रम न्यायालय अधिकरण, नई दिल्ली के पंचाट (संदर्भ संख्या 99/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-09-2012 को प्राप्त हुआ था।

[सं.एल.-12012/93/99-आई.आर. (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 5th September, 2012

S.O. 3035 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 05-09-2012.

[No. L-12012/93/99-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 99/2011

Ms. Sarla Gupta
F 14/39,
Model Town.
Delhi ...Workman

Versus

1. The Deputy General Manager State Bank of India
   Delhi Zonal Office,
   11, Sansad Marg,
   New Delhi-110 001.
2. The Assistant General Manager
   State Bank of India
   Model Town
   Delhi. ... Management

AWARD

On 20-03-1992, Shri Gulshan Arora got issued a Short Term Deposit Receipt (in short STDR) No.525711 in favour of his minor daughter under his natural guardianship from Model Town branch, State Bank of India (in short the bank). Above STDR was got issued for a period of six months with effect from 31-01-2002 and maturity value was to be credited to the Saving Bank

account of Shri Arora, as per instructions recorded on the reverse of the said instrument. In those days Smt. Sarla Gupta was working on STDR/TDR seat at Model Town branch of the bank. On 10-10-1993, she fraudulently got issued STDR No. 485605 for Rs-11,979.00 for a period of 15 months (with effect from 31-07-1992) in favour of her minor daughter, namely, Deepa Gupta under her natural guardianship, instead of crediting maturity value of STDR No. 525711 as per instructions recorded thereon. Thus she defrauded Shri Arora to the tune of maturity value of the aforesaid STDR.

2. On 31-10-1993, the maturity date of STDR No.485605, Smt.Sarla Gupta took payment in cash of its maturity value, amounting to Rs.14057.00. When proceeds of STDR No. 525711 were not credited to the SB account of Shri Gulshan Arora, he made a complaint to the bank. Acting upon that complaint, charge sheet was served upon Smt. Sarla Gupta on 29-02-1996. Her explanation was found not to be satisfactory. A domestic enquiry was conducted. Smt. Sarla Gupta was called upon to show cause as to why punishment of dismissal from service may not be awarded to her. After giving personal hearing to her, punishment of dismissal from service was awarded to her, *vide* order dated 21-07-1997. She preferred an appeal, which also came to be dismissed. Aggrieved by that action, she raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No.L 12012/93/99/IR(BI), New Delhi dated 16-06-1999 with the following terms: Whether the action of the Assistant General Manager, State Bank of India, New Delhi to dismiss Smt Sarla Gupta, workman *vide* order No.AGM/97-98/78 dated 25-06-1997 is just and fair? If not, then what relief the workman is entitled to ?

3. Claim statement was filed by Smt.Sarla Gupta pleading therein that she was working as a clerk at Model Town branch of the bank. Her service conditions were governed by Shastry Award as modified by Desai Award and subsequent bipartite settlements, which have statutory force. She was served charge-sheet on 29-02-1996 by the Assistant General Manager, Region II, State Bank of India, Delhi. The enquiry, conducted by the bank, was bogus one. Shri Gulshan Arora, the star witness of the bank, withdrew his complaint *vide* letter dated 15-01-1997. This fact was not taken into account by the Enquiry Officer or the Disciplinary Authority. According to Shri Arora, his father had authorised the claimant for withdrawing maturity value of the STDR No. 525711 and to hand over the money to him. She presents that in view of these facts, the very basis of charge-sheet stood demolished. The Enquiry Officer recorded perverse findings and held her accountable for the charges. She asserts that as per facts unfolded by Shri S.D. Kalra, her Officer Incharge, the transaction of issuance of STDR in the name of Deepa Gupta under her natural guardianship was settled under his supervision. According to her, she performed her duties under instructions of Shri Kalra and prepared vouchers as per his directions and supervision. In that situation, she cannot be blamed for the act.

4. The claimant attacks the enquiry, pleading that the charge-sheet was served upon her by the Assistant General Manager, Region II, Delhi,while she was punished by the Assistant General Manager, Model Town branch, Delhi. The Assistant General Manager, Model Town branch was an interested party and award of punishment by him makes entire process void. The Disciplinary Authority had not applied his mind to records of the case and awarded punishment in a mechanical manner. Her defence was not taken into account, which fact made his action violative of the principles of natural justice. The Appellate Authority had also not given her an opportunity to be represented by her defence representative at the time of personal hearing. He dismissed her appeal, without consideration of the facts and thus passed a wrong order. The decision of the bank in dismissing her from service is illegal. On the other hand, it is harsh and does not commensurate to her alleged misconduct. She presents that punishment awarded by the Assistant General Manager may be set aside and she may be reinstated in services of the bank with continuity and full back wages.

5. Bank demures the claim pleading that in the reference order, the date of dismissal is given as 25-06-1997 while in fact the claimant was dismissed *vide* order dated 21-07-1997. The order of the Disciplinary Authority stood merged in the order of the Appellate Authority, which was passed on 20-12-1997. In view of the principles of merger, it was order of the Appellate Authority which operates against the claimant. Therefore, mention of 25-06-1997 as date of dismissal in the reference order nowhere makes out an industrial dispute which needs adjudication. It has been claimed that this Tribunal cannot travel beyond the terms of reference and when order of dismissal was not passed on 25-06-1997, the Tribunal cannot adjudicate the controversy raised by the claimant.

6. The bank does not dispute the factum of service of charge-sheet on the claimant by the Assistant General Manager. Conduct of the domestic enquiry is also not a matter of dispute. Bank projects that the enquiry was in consonance with the principles of natural justice. It has been asserted that the claimant utilized maturity proceeds of STDR No. 525711 for issuance of STDR No. 485605 in favour of her minor daughter, namely, Deepa Gupta under her natural guardianship.

7. The entire transaction of converting STDR 525711 to STDR No. 485605 was handled by the claimant herself. Her claim that the complaint was withdrawn by Shri Gulshan Arora is unfounded. It does not lie in her mouth that no loss of money was caused to the bank. She

committed serious misconduct for which she was punished vide order dated 21-07-1997. Withdrawal of complaint by Shri Gulshan Arora does not absolve her of accountability for misconduct committed by her.

8. Bank announced that when the claimant was posted in Model Town branch of the bank at that time no Assistant General Manager was posted there. Therefore charge sheet was served upon her by the Assistant General Manager, Region II, Delhi, under whose administrative control Model Town branch was functioning at that time. On 16-03-1996, an Assistant General Manager was posted in the branch, who was her Disciplinary Authority as per circular dated 25-03-1996. Award of punishment by the Assistant General Manager was legal and valid. Her claim that the disciplinary authority had not applied his mind to facts of the case is unfounded. She committed serious misconduct for which appropriate punishment was awarded to her. The decision of the Disciplinary Authority is based on evidence and cannot be termed to be whimsical. Full opportunity was given to her to defend herself. Hence no illegality can be said to have been committed. Punishment awarded to her commensurate to the misconduct and she is not entitled to any relief.

9. Bank also projects that on 06-03-1997, claimant tendered letter of resignation on her own volition. Her resignation letter was not accepted. However, in her letter of resignation she asserted that in case any financial loss is suffered by the bank which would be attributable to her, she undertakes to repay the same. Since she wanted to make loss good, she impliedly admits the entire case. Though her letter of resignation was not accepted, yet contents of the said letter pins her grievances down.

10. On pleadings of the parties, following issues were settled:

(i) Whether the enquiry conducted by the bank was just, fair and proper?

(ii) Whether punishment of dismissal is proportionate to the misconduct of the claimant?

(iii) As in terms of reference.

11. Issue No.1 was treated as the preliminary issue. Shri B.K. Gupta, Chief Manager, entered the witness box and unfolded facts on the preliminary issue. Smt.Sarla Gupta also testified facts to rebut circumstances unfolded by Shri Gupta. On perusal of the facts detailed by Shri B.K. Gupta, Smt. Sarla Gupta and consideration of submissions made by the parties, the preliminary issue was answered in favour of the bank and against the claimant vide order dated 30-05-2011.

12. Ms. Kitoo Bajaj, authorized representative, raised submissions on behalf of the bank on proportionality of punishment. None came forward on behalf of the claimant to present her point of view. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the records. My findings on the issues involved in the controversy are as follows:

Issue No. 2

13. I will turn to factual matrix of the controversy, in order to take note of gravity of the misconduct committed by the claimant. As emerge out of charge sheet dated 29-02-1996, the claimant, while working on STDR/TDR seat at Model Town, Delhi branch of the bank, on 10-10-1993 fraudulently got STDR No. 485605 for Rs. 11,979.00 issued for a period of 15 months (with effect from 31-07-1992) in favour of her minor daughter, namely, Ms. Deepa Gupta under her natural guardianship, instead of crediting maturity value of the STDR No.525711 issued in the name of Ms. Garima Arora, under natural guardianship of Shri Gulshan Arora. She took payment of maturity value of the said STDR amounting to Rs.14,057.00 on 31-10-1993, in cash. Shri Gulshan Arora, made a complaint to the bank, to the effect that the maturity proceeds of STDR No.525711 were not credited to his SB account.

14. On above counts of charges, the Enquiry Officer recorded findings to the effect that Smt. Sarla Gupta got voucher, on the strength of which Shri S.D. Kalra passed order for credit of the maturity amount of the aforesaid STDR in SB account of Shri Arora, misplaced. In the evening she presented credit voucher in the name of Ms. Deepa Gupta under her natural guardianship and he passed that voucher in good faith, at her instance. He did not verify the debit voucher at the time of passing duplicate credit voucher in favour of Ms. Deepa Gupta under natural guardianship of the claimant.

15. Though there were lapses on the part of Shri S.D. Kalra, yet he acted at the instance of the claimant in good faith. His negligence does not constitute misconduct. Enquiry Officer concludes that it was the claimant who had defrauded the bank. He also records findings to the effect that on 31-10-1993, the claimant took cash payment of the amount of Rs.14,057.00, being maturity value of STDR No.485605. Thus, out of the facts concluded by the Enquiry Officer in his report, it came to light that the claimant got original credit voucher misplaced and thereafter presented duplicate credit voucher before Shri S.D. Kalra, who passed that voucher in favour of Ms.Deepa Gupta under natural guardianship of the claimant, in good faith. Payment of maturity value of STDR No.485605 was obtained in cash by the claimant. Shri Gulshan Arora, who had instructed the bank to credit maturity value of the said STDR in his SB Account, made a complaint in that regard. These facts highlight that the claimant defrauded the bank and got STDR issued in the name of Ms. Deepa Gupta under her natural guardianship, out of maturity value of Rs. 11979.00 of STDR No.525711, which was issued by the bank favouring Ms. Garima Arora under natural guardianship of Shri Gulshan Arora. Though

Shri Gulshan Arora had issued instructions to the bank on reverse of the said STDR to credit maturity value in his SB account, yet the claimant played deception on her superior and made him to pass voucher favouring her daughter, for credit of that amount to the account of her minor daughter. These facts are sufficient to conclude that the claimant had committed misconduct, which is of alarming complexion.

16. Punishment of dismissal was awarded to the claimant. Are there any justification for punishment of dismissal? Right of an employer to inflict punishment of discharge or dismissal is not unfattered. The punishment imposed must be commensurative with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [1963 (1) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to imposed certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

17. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Labour [1965 (1) LLJ 462]. Likewise in Management of the Federation of Indian Chambers of Commerce and Industry [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan [1996 (1) LLJ 982] the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight- jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts."

18. In B.M. Patil [1996 (11)LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the disciplinary authority should not act like a robot and justice should be moulded with humanism and understanding. It was assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

19. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer is commensurative with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved , it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab. I.C. 817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised

and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge of dismissal is not justified. On facts and in the circumstances of a case, Section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

20. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency omitted by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference cannot be made to the precedent in Bhagirath Mal Rainwa [1995(1) LLJ 960].

21. The claimant defrauded the bank, when maturity value of STDR No.525711 was got converted into STDR No.485605 in favour of her minor daughter and ultimately she took maturity amount of that STDR in cash. Misconduct of dishonesty and fraud are of serious nature which warrant penalty of dismissal. Claimant, while working as clerk with the bank, was under an obligation to protect interest of the bank. Instead of protecting interest of her employer, she committed acts of dishonesty and fraud. The misconduct committed by the claimant is of very grave nature and warrants ultimate penalty of dismissal. She was awarded the said penalty by the Disciplinary Authority. I am of the considered view that punishment awarded to the claimant commensurate to her misconduct.

Issue No.3

22. Whether projection of wrong date of dismissal in reference would make it bad? Whether that fact would debar the Tribunal from exercising its jurisdiction over the matter? Whether reading correct date of dismissal, out of the pleadings of the parties, would amount to traveling beyond the terms of reference? These propositions are to be addressed now. As projected in the reference order, the appropriate Government mentions that the claimant was dismissed from services of the bank on 25-06-1997. However, in the written statement, the bank points out that the claimant was dismissed vide order dated 21-07-1997 and not on 25-06-1997. Ms.Sarla Gupta preferred an appeal and the Appellate Authority dismissed her appeal *vide* order dated 20-12-1997. Date of dismissal from service, as pointed out by the bank, is not a disputed fact from the side of the claimant.

23. For referring an industrial dispute to adjudication, the appropriate Government should satisfy itself, on the facts and circumstances brought to its notice, in its subjective opinion that an industrial dispute exists or is apprehended. The factual existence of a dispute or its apprehension and expediency of making a reference are matters entirely for the Government to decide. An order making a reference is an administrative act and the fact that the Government has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not take it out of administrative function of the Government. The adequacy or sufficiency of material on which opinion was formed is beyond the pale of judicial scrutiny.

24. The scope of a reference is a matter of considerable importance. Although it is open to an industrial adjudicator to devise his own procedure, but he has to confine his adjudication to the points of dispute specified in the order of reference and to matters incidental thereto. Before embarking on adjudication, therefore, the adjudicator has to determine the scope of the order of reference. Hence, the question of the scope and construction of the order of reference becomes relevant. The construction of the order of reference will, in all probability, be easy or difficult, according as the document has been skillfully or carelessly drawn. In India Paper Pulp Company Limited [1949 (1) LLJ 258] the Federal Court was concerned with a proposition as to whether the order of reference can be construed by an adjudicator. Chief Justice Kania, speaking for the Court, said that not infrequently, the orders of reference are "far from satisfactory and are not carefully drafted". It is, therefore, desirable that the appropriate Government should frame such orders carefully and the question which are intended to be the tried by adjudicator should be so worded as to leave no scope for ambiguity or controversy. Same proposition of law was laid by Apex Court in Delhi Cloth and General Mills Limited [1967 (I)

LLJ 423]. Inaccuracy of language employed in the order of reference, however, does not always make any difference to the jurisdiction of the Tribunal to proceed with the reference and adjudicate upon it, as the Tribunal can interpret and find out the real meaning of the order of reference, as it stands. A duty is cast upon the Tribunal to make an attempt to construe order of reference to find out as to what was the real dispute which was referred to it and to decide it and not to throw it out on a mere technicality. Law to this effect was laid by the Apex court in Express Newspaper Limited [1962 (11) LLJ 227]. Reference can also be made to the precedent in Management of Barpukhurie Tea Estate [1978 (I) LLJ 558] and Minimax Limited [1968 (1) LLJ 369].

25. When phraseology of order of reference is inelegant, the Tribunal should look to the substance rather than to the form of the order of reference. In construing terms of the order of reference and determining the scope and nature of the points referred, the Tribunal has to look into the order of reference itself. Therefore, it is clear that where the order of reference is vague or cryptic, the tribunal may cull out the real question by construing its phraseology, In C.P.Sarathy [1953(1)LLJ 174] the Apex Court ruled that when order of reference is not clear the Tribunal may crystalise the terms of reference from the statements of the respective cases of the parties. In Delhi Cloth and General Mills Limited (supra) the Apex Court candidly laid that "the Tribunal must, in any event, look to the pleadings of the parties to find the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there-from the various points about which the parties were at variance, leading to the trouble". From above proposition of law laid it is evident that the Tribunal is competent to construe the terms of reference, when it is vaguely worded and can ascertain the real dispute between the parties even from its pleadings. Therefore actual date of dismissal of the claimant is read out of the pleadings of the parties, to articulate the controversy.

26. Whether service of charge sheet by Assistant General Manager, Region II, Delhi and award of penalty by Assistant General Manager, Model Town branch, Delhi,caused any prejudice to the claimant? Whether punishment was awarded by an incompetent authority? Whether Assistant General Manager, Region II, Delhi was incompetent to serve the charge sheet? These questions also needs attention. Clause 19.14 of Bipartite settlement dated 19-10-66, as modified by clause 3 (ii) of Bipartite Settlement dated 31-10-77, projects that the Chief Executive Officer or the Principal Officer of a bank or an alternate officer at the Head Office or Principal Office, nominated by him for the purpose, shall decide which officer (the Disciplinary Officer) shall be empowered to take disciplinary action in the case of each office or establishment. He shall also decide which officer or body higher in status than the officer authorised to take disciplinary action shall act as the Appellate Authority to deal with or hear and dispose any appeal against orders passed in disciplinary matters. These authorities shall be nominated by designation, to pass original orders or hear and dispose of appeals from time to time and a notice specifying the authority so nominated shall be published from time to time on the bank's notice board.

27. Circular dated 25-3-1996 makes it clear that the Disciplinary Authority, shall be the Regional Manager of the Region, in whose geographical area the branch/office is located. Branch/office, where the misconduct took place, is the branch/office to which this circular relates. For the purpose of domestic action, the jurisdiction to initiate enquiries commences when a misconduct is committed/detected. Commission of misconduct gives jurisdiction to a Disciplinary Authority to initiate an action against an employee. When a misconduct is committed necessity arises to punish such an employee who perpetuated the act. It is general principle of law that all crime/misconduct is local. Jurisdiction to try and punish a person for an offence depends upon the crime having been committed within the area of such jurisdiction. Even if the accused is found far beyond the area of crime, he has to be brought back before the court having local jurisdiction to try the same. Venue of trial is to be ascertained in relation to the place where the offence was committed. This general proposition of law has certain exceptions. In the light of aforesaid general proposition of law, the aforesaid circular is to be interpreted. The said circular appoints Disciplinary Authorities by their designations, such as Chief Managers/Senior Manager, Regional Manager of the Region in the geographical area of which the branch/office or Zonal Office is located, or Heads of the respective Zonal Inspection Centres and in their absence any Regional Manager of the Zone/Chief Manager. Regional Manager of the Region in the geographical area of which the branch/office is located will mean the branch/office where the office was commanded and not the branch/office where an employee was posted, when the crime was detected. In case construction is given otherwise than it will have absurd results. For example an offence is committed by an employee in Delhi and at the time of detection of crime he is posted in Kolkata or Mumbai, in that situation Disciplinary Authority would be Regional Manager of that region. Neither the documents are in his possession nor witnesses are available in his jurisdiction. It will cause difficulties and inconvenience to the witnesses. Even otherwise this construction would be against settled proposition of law.

28. Claimant was posted at Model town, Delhi branch of the bank when she committed the misconduct on 10-10-1993 and 31-10-1993. No Assistant General Manager was posted at Model Town, Delhi branch of the

bank in October 1993. Charge sheet was served upon her by the Assistant General Manager, Region II, Delhi under whose geographical area Model Town, Delhi branch of the bank was functioning at that time. On 16-03-1996, an Assistant General Manager was posted in the branch, who was the Disciplinary Authority of the claimant as per circular dated 25-03-1996. He awarded punishment to the claimant on 21-7-1997, being the Disciplinary Authority. The fact that the charge sheet was issued by Assistant General Manager, Region II, Delhi, would not make that act illegal since he was the Disciplinary Authority of the claimant under whose administrative control Model Town, Delhi branch was functioning at that time. No illegality was committed when he served charge sheet to the claimant. Award of punishment by the Assistant General Manager, Model Town, Delhi branch on 21-07-1997 is also in consonance with the circular dated 25-03-1996. Therefore, on this count too, no illegality comes over record.

29. In view of the reasons detailed above, order of punishment of dismissal is found to be legal. No circumstances are brought over record to project that the punishment awarded to the claimant was shockingly disproportionate or passed by way of victimization. Therefore, it cannot be said that punishment awarded to the claimant was unjustified. No reasons emerge over record to grant indulgence in favour of the claimant. Her claimant statement deserves dismissal, being devoid of merits. Accordingly, her claim statement is dismissed. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2012

का.आ.3036.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या 158/2004 ITC 42/1999 (Old)] को प्रकाशित करती है ,जो केन्द्रीय सरकार को 05-09-2012 को प्राप्त हुआ था

[सं. एल-12012/203/1998-आई आर (बी-I)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 5th September, 2012

S.O. 3036 .—In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Central Government hereby publishes the Award [Ref.No.158/2004, ITC 42/1999 (Old)] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Saurashtra and their workmen, received by the Central Government on 05-09-2012.

[No. L-12012/203/1998-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Binay Kumar Sinha, Presiding Officer
CGIT-cum-Labour Court
Ahmedabad, Dated 25-07-2012

Reference : CGITA of 158/2004
Reference : ITC 42/1999 (Old)

Managing Director,
State Bank of Saurashtra
(Now State Bank of India),
Head Office, Nilambaug,
Bhavnagar ....First Party

And their workman
Shri Nareshbhai Ravjibhai Chauhan
C/o. Manibhai G. Gandhi,
113, City Centre Complex, Kalanala,
Bhavnagar ....Second Party

For the first party:— Shri Bhargav M. Joshi, Advocate

For the second party:— Shri Manibhai G. Gandhi, Advocate

AWARD

As per order dated New Delhi 25-01-1999 the Appropriate Government, Ministry of Labour by notification No. L-12012/203/1998 IR(B-I) under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947 referred the dispute for adjudication to the Industrial Tribunal Ahmedabad, formulating the terms of reference under the schedule as follows:—

SCHEDULE

"Whether the action of the management of State Bank of Saurashtra in terminating the services of Shri Nareshbhai Ravijibhai Chauhan w.e.f. 12-12-1997 is legal and justified? If not, to what relief the said workman is entitled ?"

2. Both parties the management and the workman filed their respective pleadings in this case.

3. The case of the second party workman as per statement of claim Ext. 4 is that he was appointed as peon to do work at Talaja main branch of State Bank of Saurashtra (India)

in the year 1993 and he worked up to 12-12-1997 but thereafter he was orally terminated from the work. He claimed that he worked for 98 days in the year 1993, and 223 days in the year 1994 from January to December, 275 days in the 1995 from January to December, 281 days in the year 1996 from January to December and he worked for 270 days in the year 1997 during the period January to December-1997. It is further case of the workman that he completed 240 days of work in calendar year and was doing work on the vacant permanent post but he was not absorbed and instead he was orally terminated from 12-12-1997. Further case is that though he completed 240 days of works but the management of State Bank of India failed to comply with the provision of section 25 (F) of I.D. Act and that neither notice or notice pay was given to him before his retrenchment by oral order. Further case is that since management of first party has violated the provision of section 25 (F) and so he is entitled for reinstatement with full back wages from the date of oral termination 12-12-1997.

4. As against this the case of the first party as per its written statement at Ext. 7 is that the first party is a bank constituted under the Banking Regulation Act, govern by service rules. There is a recruitment board namely Banking Services Recruitment Board and the appointment of staff is made by selection through written test and oral interview conducted by the Banking Service Recruitment Board for subordinate staff. Further case is that the branches of the Bank are entitled to engage certain casual workers on daily wages basis if there is any work of temporary nature. Denying the claim of the second party workman as per statement of claim it has been contended that the second party Nareshbhai R. Chauhan was engaged by Talaja (Main) branch as casual labour for performing the work of casual nature and that engagement on daily rated wages. His engagement was not through selection process. His engagement as casual labour on daily wages was not on permanent post and also not for the work of permanent nature. The second party Nareshbhai R. Chauhan was not given any appointment letter, he did not appear any written test or face oral interview, rather his engagement was as casual labour on daily wages on exigencies and Recruitment Rules was not followed and so the second party is not eligible or entitled to claim for regularization or even for reinstatement as casual labour. Further case is that the second party workman never completed 240 days of work in any calendar year rather he was engaged as casual labour as and when needed by Talaja main branch and so the second party has no legal right to claim reinstatement on the post of peon. The post of peon is of permanent nature and peon is recruited through selection process and no such selection process had been followed while engaging the second party as casual labour. Further case is that since the second party workman was casual worker on daily rated basis and so there was no need for giving retrenchment notice under Section 25 (F) of the I. D. Act. On these scores prayer has been made to reject the reference since the second party workman is not entitled to get any relief.

5. In view of the pleadings of the parties the following issues are taken up for determination.

ISSUES

(I) Is the reference maintainable?

(II) Has the workman valid cause of action to raise Industrial Dispute?

(III) Whether the workman (second party) has completed 240 days of work in calendar year preceding his termination w.e.f. 12-12-1997.

(IV) Whether the second party is entitled to get relief as claimed?

(V) What orders are to be passed?

FINDINGS

(6) **ISSUE NO. III**

As per Ext. 8 the second party prayed for production of documents from the first party of the vouchers from the year 1994 to December, 1997 for four years and also for the attendance-sheet if available in the Bank from the year 1994 to December, 1997. Thereafter an order was passed by the Industrial Court, Ahmedabad, directed production of documents as prayed for. Thereafter some documents were produced with list as per Ext. 11 by the second party and its production was allowed. As per order regarding production of document the first party produced the documents at Ext. 12 through which the Xerox copy of vouchers with respect to amount paid to Naresh R. Chauhan 55 vouchers from 06-01-1994 to 25-06-1997 were filed and also affidavit of Shri A.P. Vyas, Branch Manager was filed in support of the production of those documents.

(7) The workman Naresh R. Chauhan examined himself at Ext. 17 in support of case and he was also cross-examined by the lawyer of the first party Bank. During cross-examination he fairly admitted that there is no document with him to show that he had been engaged/appointed on permanent vacant post of peon. He also admitted that he was engaged on daily rated basis when the permanent employee went on leave and he was engaged on work on 21-04-1993. He also admitted that he was being paid daily rated wages through vouchers. On the other hand witness of first party namely N.D. Chaklasiya, Branch Manager State Bank of India, Talaja main branch examined himself

on affidavit at Ext. 34 denying the claim of the second party that he was engaged on permanent vacant post. He also denied that the second party ever completed 240 days of work in calendar year rather he had worked intermittently on daily rated basis. A details of works of the second party has been mentioned in the affidavit showing number of days of work in the year 1994, from January, 1994 to December, 1994, 222 days, 196 days of works from January, 1995 to December, 1995, 264 days of work in the calendar year 1996 from January, 1996 to December, 1996 and 56 days of work in the year 1997. The management witness has deposed in affidavit that the days of work in the year 1994, 1995, 1996 and 1997 performed by the second party was in a phase manner. The management witness was thoroughly cross-examined by the lawyer of the second party workman but nothing could have been gained to show that his engagement/appointment though not under staff Recruitment Rules, was made on permanent vacant post.

(8) From scrutinizing the evidence of both sides it appears that the second party has claimed that he completed more than 240 days of work in calendar years 1995, 1996 and 1997. On the other hand the evidence of the management witness go to show that only in the year 1996 the second party workman completed more than 240 days of work (264) days in the calendar year 1996 from January, 1996 to December, 1996. The second party workman claims that in the calendar year 1997 preceding his termination on 12-12-1997 he completed more than 240 days of work but according to the evidence of the management witness as per Ext. 34 the second party had performed 56 days of work having with breakup in the month of January, 1997 19 days, February, 1997 18 days, March, 1997 19 days and in the month of June dated 25-06-1997 extra work has been shown for which payment was made Rs. 30 and Rs. 80 only. On perusal of the 56 vouchers produced by the first party Bank which are marked Ext. 14 it does not go to show that in the calendar year 1997 preceding his termination the workman ever completed 240 days of work.

(9) Mr. M.G. Gandhi learned advocate for the second party workman gave much stress upon Ext. 11/5 to show that in the year 1997 the workman had also completed more than 240 days of work (270 days of work). But from very perusal of Ext. 11/5 it is clear that this statement regarding work year wise has been made by the workman himself without any authentication by the bank official. The question arises if the workman completed 240 days of work even in 1997 prior to his alleged oral termination then why not the workman obtained periodical certificate from the Bank Manager of the concerned branch, the statement showing his number of days particularly in the year 1995, 1996 and 1997 are the self-made a statement of the workman. From the 54 vouchers at Ext. 14 produced by the first party Bank it is verified that in the year 1996 the workman had completed more than 240 days of work which also finds support from the evidence of the management witness at Ext. 34 that in the year 1996 the workman had worked for 264 days from the vouchers produced by the first party which are Ext. 14. It appears that the workman had completed work in the year 1997 much less than 100 days but the workman himself claim through self-statement at Ext. 11/5 that he worked for 270 days. His such self-statement has not been admitted by the management evidence at Ext. 34. So, considering all the aspects it appears that though the second party workman had connection with the first party Bank as a daily rated labour from 1993 up to 1997 and in the calendar year 1996 the workman had completed more than 240 days of work. Thus the workman had completed 240 days of work in the year preceding calendar year of 1996 but not completed 240 days of work in the year 1997. Further that no seeing long link of the workman with the Bank during which the workman had performed various types of works, it was duty of the first party Bank either to issue notice regarding retrenchment or to pay compensation for retrenchment or even one month notice pay prior to his alleged oral termination w.e.f. 12-12-1997. This issue is therefore decided in favour of the second party workman.

(10) **ISSUE NO. IV**

The learned counsel for the second party argued that the workman had completed 240 days of work but the employer first party Bank has violated the provision of section 25 (F) in not giving retrenchment notice or notice pay and so the workman is entitled for his reinstatement from the date of oral termination with full wages. In this connection he has relied upon the case law reported in LLN January-2010 SC 48 in the case between Director, Fisheries Terminal Division and Bhikubhai Meghanjibhai Chavda, LLN 2007 670, Gujarat High Court, Executive Engineer (Stores) and Another and Harsha M. Jani, LLN (V) 2008 167 Gujarat High Court—Executive Engineer V/s Harisingh Modhbhai Gadhvi, LLN 2003 Rajasthan High Court, 484 State of Rajasthan and Others and Mahendra Joshi and Another, LLN 2004 Allahabad High Court 906 Uttar Pradesh Avas Evam Vikas Parishad, Lucknow and Another V/s Labour Court-II and another, LLN 2008 Allahabad High Court 433 (Secretary, Krishi Utpadan Mandi Samiti, Khair District Aligarh V/s Presiding Officer, Labour Court, U.P., Agra and Others), LLN 2004 Bombay High Court 928 (Executive Engineer, Irrigation Division Gondia and Others V/s Maroti son of Janba Dupare).

Learned counsel for the second party further relied upon the case law—Chairman Punjab National Bank and Another V/s Astamija Dash (C.A. No. 3125 of 2008) between Astamija Dash and Chairman Punjab National Bank and Another (C.A. No. 3126 of 2008) and in the case law of U.P State Electricity Board and Pooran Chandra Pandey and others (LLN 2008) SC 965, case of Ramesh Kumar V/s State of Haryana (LLN 2010) 831 SC, Anoop Sharma V/s Executive Engineer health Division No. 1 Panipat Haryana (LLN 2010) 831 SC (decided on 08-04-2010), Krishan Singh and Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)—LLN 2010-634 SC, Gujarat Pollution Board V/s Jagdish Nathabhai Chavda LLN (5) 2009 176 Gujarat High Court, but case of Harjider Singh and Punjab State Warehousing Corporation (LLN 2010) 14 SC, Central Bank of India V/s S. Satyam and Others (LLN 1997) 31 SC, Union Bank of India and Another V/s Mohan Pal and Others (LLN 2002) between Lt. Governor (Administration) and others V/s Sadanandan Bhaskar and Others. Learned Counsel for the second party has further relied upon the case law Reliance Energy Ltd., Mumbai and Yadayya Giri and others LLN 2010 Bombay High Court, Tamilnadu State Transport Corporation (Maduria Division-IV) Ltd. and (1) Presiding Officer, Industrial Tribunal, (2) Secretary, Rani Management Transport Corporation Ltd. reported in LLN 2010 703 Madras High Court and in the case of law of Executive Engineer V/s A.D. Makrani LLN 2010 812 Gujarat High Court.

(11) The learned counsel for the second party has further cited case law reported in 2011(V) LLN 689 (HP) the case of State of Himachal Pradesh and another V/s Kapil Dev on point of section 25-F, 25-Q and 25-H and also cited the case law of Jharkhand High Court reported in 2011 (5) LLN 692 Jharkhand the case of Management of Bokaro Steel Plant V/s State of Jharkhand and another. From going through the case law cited on behalf of the second party workman it is obvious that the second party workman was not engaged/temporarily appointed on permanent vacant post admittedly no recruitment rules was followed in engaging the second party workman as daily rated labourer. Rather from the materials on the record it appears that his appointment was intermittently as daily rated wager on requirement of work. It is also not a case of the second party workman that after his oral termination from 12-12-1997 a daily rated wager junior to him was absorbed in permanent employment or even that after his alleged termination another daily rated worker was engaged in his place so there is no case as to violation of provision of section 25 (G) and 25 (H) of the I.D. Act. As per case law relied upon 2011(5) LLN 689 is based on the charge of absence without leave or permission regarding unauthorized absence from duty followed by Disciplinary proceedings against workman, so this case law is not applicable, in the instant case to support the second party workman. The learned counsel for the second party has further cited a case law reported in 209 (3) LLN 603 SC on point of enhancement of compensation by the Apex Court. In this case daily rated labourer was terminated whereas the Labour Court awarded compensation in lieu of reinstatement of services he has also relied upon a case law reported in 2008 (4) LLN 612 SCC the case of Talwara Cooperative Credit and Service Society Ltd. and Sushil Kumar. This case law is based upon section 11 A and 25 (F). In the given case law respondent was a clerk in the appellant society was terminated as allegedly the appellant society was running into losses wherein instead of reinstatement compensation was granted to the terminated workman.

(12) On the other hand Shri B.M. Joshi Learned Counsel for the first party has relied upon the case law of Karan Singh V/s Executive Engineer Haryana State Marketing Board reported in 2007 (4) LLN 960. On point of section 10(4) and 25 (F) ID Act wherein the workman instead of reinstatement was allowed compensation towards full and final settlement. He also relied upon the case law of Ghaziabad Development authority and Another V/s Ashok Kumar and another 2008 (2) page 51 SC wherein instead of reinstatement compensation was granted in accordance with completed year of services or in part thereof. He has also relied upon a case law of Bata India Ltd. and Fourth Industrial Tribunal, West Bengal and others reported in 2010 (1) LLJ 431 (Cal). In the given case law workman was a salesman on daily wages, he was terminated from the service. The industrial Tribunal passed an award directing his reinstatement with back wages but it was held by the Hon'ble High Court that workman worked on daily wages for a little more than a year and so relief of reinstatement was not to be granted automatically on termination being found illegal, compensation in lieu of reinstatement would be a proper relief. It has been pointed out by the learned counsel for the first party that this judgment of the Calcutta High Court is also based upon the case law of Senior Superintendent Telegraph (Traffic) Bhopal V/s Santosh Kumar Seal 2010 (III) LLJ 600 SC. The learned counsel has also relied upon the case law of state of U.P. V/s Presiding Officer, Labour Court (1st) U.P. Kanpur and Another reported in 2011 LLR 216 wherein it has been held that non-compliance of provisions of section 25F of the Industrial Disputes Act providing for payment retrenchment compensation at the time of termination will not be tenable since the workman was daily-wager, hence

the award directing reinstatement with full back-wages is to be set aside. He has also relied upon a case law of Nepal S/o Sh. Khichhu Ram and Presiding Officer, Labour Court-III, Faridabad and Another reported in 2011(2) LLJ 80 (P & H) wherein it was held the termination of workman service was in violation of section 25 (F) of the I.D. Act 1947 but he was entitled only to compensation in lieu of reinstatement. Lastly the learned counsel for the first party had relied upon the case law of Senior Superintendent (Traffic) Bhopal V/s Santosh Kumar Seal wherein the Hon'ble Apex Court has held that the relief of reinstatement and back wages to the workman who work hardly for 2 or 3 years cannot be said to be justified and instead of monetary compensation could subsurve the ends of justice.

(13) After going through the case laws cited on behalf of the second party workman on one hand and case laws cited on behalf of the first party on another hand, I am of the considered view that the second party workman Shri Nareshbhai Ravjibhai Chauhan was a daily rated wager and so the second party workman cannot claim for his reinstatement with full back wages or the even part of the back wages, rather in view of the recent case law of the Hon'ble Apex Court in the case law of Senior Superintendent (Traffic) Bhopal V/s Santosh Kumar Seal that has also been follow in the subsequent case laws cited on behalf of the first party, the second party workman as matter of right is not entitled for his reinstatement even he completed 240 days of work in one calendar year. Admittedly in one calendar year 1996. So, if retrenchment compensation or notice pay under section 25 (F) was not given to him by the first party prior to his oral termination w.e.f. 12-12-1997, he is not entitled for his reinstatement with any part of back wages since he has completed 240 days of work in a calendar year. So, he is entitled to get a lumsum compensation of Rs. 10,000 which will meet the ends of justice. This issue is decided accordingly.

(14) **ISSUE NOS. I, II & V**

In view of the findings given to issue no. III and IV in the foregoings, I further find and hold that the reference is maintainable and that workman has valid cause of action to raise Industrial Dispute and that he is entitled for a lumsum compensation of Rs. 10,000.

This reference is allowed in part on contest with cost of Rs. 1000. The first party is directed to pay the compensation of Rs. 10,000 with litigation cost of Rs. 1000 within 60 days of this award failing which the amount of compensation will carry interest @ 9 % per annum.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 7 सितम्बर, 2012

का.आ.3037 .— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसंसोल के पंचाट (संदर्भ संख्या 01/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-09-2012 को प्राप्त हुआ था

[सं. एल-22012/335/2007-आई आर (सी एम-II)]

बी.एम. पटनायक, शीश राम अनुभाग अधिकारी

New Delhi, the 7th September, 2012

S.O. 3037.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2008) of the Central Government Industrial Tribunal-cum-Labour Court Asansol as shown in the Annexure, in the Industrial Dispute between the management of Gourandi-Begunia Colliery of M/s. ECL, and their workman, received by the Central Government on 07-09-2012.

[No. L-22012/335/2007-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Jayanta Kumar Sen,

Presiding Officer

Reference No. 01 of 2008

PARTIES: The General Secretary, KMC, Asansol (WB)

Vs.

The Agent, Gourandi-Begunia Colliery, M/s. ECL, Burdwan (W.B).

REPRESENTATIVES:

For the management:	Sri P.K. Goswami, Ld. Advocate
For the union (Workman):	Sri Rakesh Kumar, Ld. Representative
Industry: Coal	State: West Bengal
	Dated - 22-08-12

AWARD

In exervice of powers conferred by caluse (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India

through the Ministry of Labour vide its letter No. L-22012/335/2007-IR(CM-II) dated 03-01-2008 has been pleased to refer the following dispute for adjudiction by this Tribunal.

SCHEDULE

"Whether the action of the management of M/s. ECL in dismissing Sri Ganga Bouri, U.G. Loader from service w.e.f. 21-05-2007 is legal and justified? If not, to what relief is the workman entitled ?"

Having received the Order of Letter No. L-22012/335/2007-IR (CM-II) dated 03-01-2008 of the above said reference from the Govt. of India, Ministry of Labour. New Delhi for adjudication of the dispute, a reference case No. 01 of 2008 was registered on 16-01-2008 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of them claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Rakesh Kumar, Ld. Representative of the Union, submits that the workman has already joined in service and now not at all interested to proceed with the case any further. Since the workman is no more interested to proceed with the case further, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 7 सितम्बर, 2012

का.आ.3038.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई॰ सी॰ एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 47/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/37/2004-आई आर (सीएम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th September, 2012

S.O. 3038.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Patmohona Colliery, Sodepur Area of M/s. ECL, and their workman, received by the Central Government on 07-09-2012.

[No. L-22012/335/2007-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Jayanta Kumar Sen, Presiding Officer

Reference No. 47 of 2004

PARTIES: The Chief Org. Secretary, KMC, Asansol (WB)

Vs.

The Agent, Patmohona Colliery, M/s. ECL, Burdwan (W.B).

REPRESENTATIVES:

For the management : Sri P.K. Das, Ld. Advocate

For the union (Workman) : None

Industry: Coal State: West Bengal

Dated - 21-08-2012

AWARD

In exercice of powers conferred by caluse (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/37/2004-IR(CM-II) dated 06-09-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of dismissal Imposed to Sh. Sibu Dusad, U.G. Loader by the management of Patmohona Colliery of Eastern Coalifields Limited is legal and justified? If not, to what relief he is entitled ?"

Having received the Order of Letter No. L-22012/37/2004-IR (CM-II) dated 06-09-2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 47 of 2004 was registered on 13-09-2004 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of there claims. In pursuance

of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record I find that the a petition dated nil duly signed by the Chief Organising Secretary of the Union and the workman Shri Sibu Dusad has been filed on 23-08-2010 stating that the management has approved his reinstatement in service and wants to withdraw the case. Since the workman is no more interested to proceed with the case further, the case is closed and accordingly and order of "No Dispute" is hereby passed

ORDER

Let an "Award" be and the same is passed as no dispute existing, Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 7 सितम्बर, 2012

का.आ.3039 .—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई॰ सी॰ एल॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, असंसोल के पंचाट (संदर्भ संख्या 33/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-09-2012 को प्राप्त हुआ था

[सं. एल-22012/108/2004-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th September, 2012

S.O. 3039 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2005) of the Central Govt. Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL, Eastern Coalfields Limited, and their workman, received by the Central Government on 07-09-2012.

[No. L-22012/108/2004-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Jayanta Kumar Sen, Presiding Officer

Reference No. 33 of 2005

PARTIES: The General Secretary, KMC, Asansol (WB).

Vs.

The Agent, Manderboni Colliery, M/s. ECL, Burdwan (W.B.)

REPRESENTATIVES:

For the management: Sri P.K. Das, Ld. Advocate

For the Union : Sri S.K. Pandey, Ld.

(Workman) Representative

Industry: Coal State: West Bengal

Dated - 22-8-2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/108/2004-IR(CM-II) dated 11-5-2005 has been pleased to refer to the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Manderboni Colliery under Pandaveshwar Area of M/s. Eastern Coalfields Limited in dismissing Sri Rajesh Dhangar, U.G. Loader, U.M. No. 118316 from service vide Order No. ECL/MC/C-6/32 dated 29-3-1003/3-4-2003 is legal and justified ? If not, to what relief the workman is entitled?"

Having received the Order of Letter No. L-22012/108/2004-IR (CM-II) dated 11-05-2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 33 of 2005 was registered on 31-05-2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri S.K. Pandey, Ld. Representative of the Union, submits that the workman has already been reinstated by the management and does not want to proceed with the case further. Since the workman is no more interested to proceed with the case further, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 7 सितम्बर, 2012

का.आ.3040.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.आई.पी.ई.टी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या-2, धनबाद के पंचाट (संदर्भ संख्या 19/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-09-2012 को प्राप्त हुआ था।

[सं. एल-42012/38/2004-आई आर (सी एम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th September, 2012

S.O. 3040.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 19/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, Dhandbad as shown in the Annexure, in the industrial dispute between the management of Central Institute of Plastic Engineering Technology and their workmen, received by the Central Government on 07-09-2012.

[No. L-42012/38/2004-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

Reference No. 19 of 2005

PARTIES: Employer in relation to the management of Central Institute of Plastic Eng. Technology and their workmen.

APPEARANCES:

On behalf of the workman: Mr. R.N. Thakur, Rep. of workmen

On behalf of the Management: Mr. D.K. Verma, Ld. Adv.

State: Bihar Industry: Chemical & Fertilizer

Dated, Dhanbad 3rd August, 2012

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal vide their Order No.L-42012/38/04-IR (CM-II) dt. 29-12-2004.

SCHEDULE

"Whether the action of the management of Central Institute of Plastic Engineering Technology, Hazipur in refusing to regularise the services of S/Sh. Teju Malik, Chandeswar Malik, Biswanath Malik, Naresh Malik and Anil Kumar Dubey is legal and justified? If not, to what relief the workmen are entitled to?"

2. None appeared for the Union concerned nor any of the workmen Teju Malik, Chandeswar Malik, Biswanath Malik, Naresh Malik and Anil Kumar Dubey, Mr. D.K. Verma, the Ld. Advocate is present with a witness Sri M.S. Mehta A.O. for the management, but by filing a petition he has submitted that since WW1 Chandeswar Malik did not appear for further examination in chief after his partial chief held on 6-4-2006, so his evidence was closed as per order dt- 24-5-2011 of the Tribunal and that in view of the aforesaid facts, there is no examination on the part of the workmen; therefore there is no need to examine any witness on behalf of the management; as such it has been submited to close the case.

On perusal of the case record, I find that in fact, the aforesaid WW1 Chandeswar Malik after his partial chief on 6-4-2006 did not appear for further chief on 19-4-2012, so the evidence of the workmen was closed and thereafter it was fixed for the evidence of the management as today itself. In this case, I find there is no evidence on behalf of the workmen brought on the record despite ample opportunity for altogether more than five years for it; therefore the management has rightly declined to examine the present MW M.C. Mehta for the management.

Considering the aforesaid facts and circumstances, the present Reference in lack of any evidence on behlaf of the workmen in support of their claim for regularisation is closed; accordingly an Award of no dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 7 सितम्बर, 2012

का.आ.3041.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 12/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-09-2012 को प्राप्त हुआ था।

[सं. एल-22011/10/2010-आई आर (सी एम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 7th September, 2012

S.O.3041 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 12/2010) of the Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 07-09-2012.

[No. L-22011/10/2010-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 12/2010

Ref. No. L-220011/10/2010-IR (CM-II) dated: 15-6-2010

BETWEEN

The State Secretary
Bhartiya Khadya Nigam Krmachari Sangh
TC/3V, Vibhuti Khand
Gomti Nagar
Lucknow
(Espousing the cause of Shri S.K. Haikarwal)

AND

The General Manager
Food Corporation of India
TC/3V, Vibhuti Khand
Gomti Nagar
Lucknow

AWARD

1. By order No. L-220011/10/2010-IR(CM-II) dated: 15-06-2010 the Central Government in the Ministry of Labour, New Delhil in exercise of powers conferred by clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Secretary, Bhartiya Khadya Nigam Krmachari Sangh, TC/3V, Vibhuti Khand, Gomti Nagar, Lucknow and the General Manager, Food Corporation of India, TC/3V, Vibhuti Khand, Gomti Nagar, Lucknow for adjudication.

2. The reference under adjudication is:

> "Whether the action of the management of FCI, Lucknow for imposing penalty of recovery of Rs. 3,73,750.94 upon Shri S.K. Haikarwal, ex-ag-i vide order dated 27-7-2009 and for allegedly withholding (i) the level encashment pertaining to year 2006-07 and (ii) pay production link bonus for the year 2007-08 is legal and justified? To what relief is the claimant entitled for?"

3. It is admitted case of the parties that the workman, SK. Haikarwal, was served upon a charge sheet dated 17-06-2007 for the alleged misconduct and was imposed a punishment of recovery of Rs. 3,73,750.94 vide impugned order dated 27-07-2009.

4. The workman's union has alleged that the action of the management of FCI in issuance of the charge sheet dated 17-06-2007 to the workman after an inordinate delay of 10 years caused prejudice to the workman as the workman superannuated on 30-06-2007. It has further alleged that the management appointed one Shri S.P. Mishra, a retired officer of the corporation as Enquiry Officer who had no authority under Rules. The workman's union has contented that the under Rules the management was expected to conclude the enquiry within one year; but it failed to do so and passed the impugned order dated 27-07-2009 after one month and 10 days after completion of one year from the date of issue of the charge sheet, hence the impugned order dated 27-07-2009 is illegal and without jurisdiction. It has been alleged that the Enquiry Officer closed the enquiry by means of order sheet dated 06-02-2009; but again re-opened the same without any reason for which he was not competent at all. The workman's union in para 22 of its claim has pleaded that it had not been provided the documents demanded by it during the enquiry; likewise he was not provided annexure to the enquiry report; and the impugned order dated 27-09-2009 was passed and recovery was made from the retiral benefits of the workman which unjust. Accordingly, the workman's union has prayed that the impugned order dated 27-07-2009 be set aside and the management of the FCI be directed to pay the amount recovered from the workman.

5. The management of the FCI has denied the allegations of the workman's union and has submitted that there is no bar in appoint in a retired person as Enquiry Officer and as regard late issuance of charge sheet it has submitted that as soon as the misconduct committed by the workman came to the knowledge of the management, he was issued said charge sheet dated 17-07-2007 after making proper investigation. The management of the FCI has defended the procedure adopted by its Enquiry Officer and has submitted that the workman was afforded all reasonable opportunity to defend himself and the principles of natural justice were duly complied with while conducting the enquiry, as such, the impugned order is just and liable to be upheld. Accordingly, it has prayed that the claim of the workman's union be set aside without any benefit to the workman concerned.

6. The management of the FCI filed its written statement on 01-07-2011 and accordingly, next date 23-08-2011 was fixed for filing documents and rejoinder; but parties remained absent on 23-08-2011. On application was moved from either party seeking time or otherwise; hence, it was ordered to put up the file on 12-10-2011 for further order.

On 12-10-2011 too the workman's union remained absent. Likewise both of the parties did not turn up on subsequent dates i.e. on 07-12-2011, 05-01-2012, 27-02-2012, 04-04-2012, 25-05-2012 and 17-07-2012. The workman neither appeared nor bothered to file rejoinder or document or any application seeking time for the same. Even today, neither workman's union nor the workman is present and no application has been moved, seeking adjournment, accordingly, keeping in view long pendency of the case and reluctance of the parties the case is reserved for award.

7. It was the case of the workman's union that workman has been issued a charge sheet with inordinate delay, which cause prejudice to his case and that the Enquiry Officer

was wrongly appointed, contrary to the relevant Rules. It has also pleaded that the principles of natural justice were not followed during the enquiry, and accordinly the impunged order dated 27-07-2009 is bad in the eye of law and the same is liable to be set aside with consequential benefits to the workman. The workman's union has field photocopy of the certain documents in support of his pleadings.

8. Per contra, the management of the telecom has disputed the claim of the workman's union and has submitted that the charge sheet was issued to the workman immediately after making investigations as it came to know of the misconduct and further that there is no abnormality with the appointment of the Enquiry Officer or that with the enquiry proceedings as the same were conducted in accordance with the principles of natural justice. It has not filed any document in support of its submissions.

9. I have scanned entire, evidence on record and given my thoughtful consideration to the pleading of the rival parties.

10. The workman's union come forward with the case that the workman was issued a charge sheet with inordinate delay and the Enquiry Officer was appointed contrary to the Rules; who conducted the enquiry in violation of principles of natural justice. It filed certain documents, which contained photocopy of charge sheet, relevant Rules, order sheets etc. in support ot its claim; but has failed to file any rejoinder to rebut the contentions of the management of the FCI in its written statement in spite of ample opportunity has been extended to it. Likewise, it did not turn up to prove its pleading through oral evidence by entering into the witness box.

11. It is settled position of law that a party challenging the legality of order, the burden lies upon it to prove illegality of the order and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to challenge the validity of the impunged order dated 27-07-2009 of the management of FCI; whereby the penalty of recovery of Rs. 3,73,750.94 had been imposed upon the workman; and to prove that the action of the management in passing the impunged order dated 27-07-2009 was illegal. It was the case of workman's that the departmental enquiry was conducted without following the principles of natural justice and relevant Rules. This claim has been denied by the management; therefore, it was for the workman's union to lead evidence to show that the alleged injustice was done to the workman, by the management of the FCI and the enquiry was not conducted fairly, without following the principles of natural justice; but the workman's union failed to prove the same as it has not turned up to corroborate the allegations by proper evidence.

12. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & Others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries v. Labour Court and Others, 1984 (49) FLR 38 Airtech Private Limited v. State of U.P. and Others and 1996 (74) FLR 2004 (Alld.) Meritech India Ltd. v. State of U.P. and Others wherein it was observed by the Apex Court:

> "that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a part is on the party making the allegation. The test would be who would fail if no evidence is led."

13. In the present case the workman's union has not turned to substantiate his case by way of filing any oral evidence. Mere pleadings are no substitute for proof. It was obligatory on the part of workman's union to come forward with the case that the workman had been denied proper defence during the departmental proceedings and the impunged order dated 27-07-2009 was passed after conducting the enquiry in violation of the principles of natural justice; but the workman's union failed to farward any evidence in support of its claim, as it did not turn up for filing its evidence before this Tribunal. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of Food Corporation of India in imposing the penalty of recovery of Rs. 3,73,750.94 vide impunged order dated 27-07-2009 was illegal and unjustified.

14. Accordingly, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman, S.K.; Haikarwal is not entitled to any of the relief(s) claimed.

15. Award as above.

LUCKNOW Dr. MANJU NIGAM, Presiding Officer

21-08-2012.

नई दिल्ली, 7 सितम्बर, 2012

का.आ.3042.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण संख्या-1, नई दिल्ली के पंचाट (संदर्भ संख्या 249/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-09-2012 को प्राप्त हुआ था।

[सं. एल-42012/58/2005-आई आर(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

3499 GI/12-24

New Delhi, the 7th September, 2012

S.O. 3042.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 249/2011 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Central Public Works Department, and their workmen, received by the Central Government on 07-09-2012

[No. L-42012/58/2005-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA, COURTS COMPLEX, DELHI

I.D. No. 249/2011

Sbri Ranvir Singh S/o Sh. Yad Ra,

C/o Sh. Hukam Chand President,

Through All India CPWD Karamchari Union (Regd.)

Plot No. 1, Aram Bagh, Near Udasin Mandir,

Paharganj, New Delhi

...Workman

Versus

The Executive Engineer,

L Mandal, CPWD,

Room No. 442, I.P. Bhawan,

New Delhi.

... Management

AWARD

A beldar, appointed on muster roll in July 1982 by the Central Public Works Department (hereinafter referred to as the management), was asked to perform duties of enquiry clerk. He performs those duties till 1986. His services were regularized on 16-12-1993 as beldar on Work Charge Establishment. Thereafter from June 1999 till 29-07-2002 duties of enquiry clerk were again taken from him. He was paid wages of enquiry clerk for the subsequent period only. From 20-07-2002, he was ordered to perform duties of beldar. It led that beldar to raise a demand on the management for payment of his wages for the post of enquiry clerk for the period from 1982 till 1986. The demand was turned down by the management. Feeling aggrieved by the said act, he approached the All India CPWD Karamchari Union, (in short the union) for redressal of his grievance. The union raised a dispute before the Conciliation Officer. Management resisted the claim and as such conciliation proceedings ended into failure. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to Central Government Industrial Tribunal No. II, New Delhi for adjudication, vide order No. L-42012/58/2005-IR (CM II), New Delhi dated 06-12-2005, with the following terms:

> "Whether the demand of All India CPWD Karamchari Union in respect of workmen Ranvir Singh regarding payment of difference of wages of the post of enquiry clerk with that of beldar with effect from July 1982 is legal and justified? If Yes, to what relief the workman is entitled to and from which date?"

2. Claim statement was filed by the beldar, namely Shri Ranvir Singh, pleading therein that he was appointed as beldar by the management in July 1982. However, duties of enquiry clerk were assigned to him since the date of his appointment. He was working as enquiry clerk since July 1982 and was absorbed as such in June 1999. Though work of enquiry clerk was taken from him for that period, yet he was paid wages of belder. His pay was fixed in the scale meant for enquiry clerk with effect from 03-06-1999. He presents that the worked as enquiry clerk upto 20-12-2002. Though pay for the post of enquiry clerk was released in his favour from 04-06-1999 to 19-07-2002, yet difference of wages from 20-07-2002 to 20-12-2002 is yet to the released, for he was paid wages of beldar for that period. He claims that the management may be directed to release his difference of pay from July 1982 to 03-06-1999 and from 20-07-2002 to 20-12-2002, sicne work of enquiry clerk was taken from him and wages for the post of beldar was paid and an award may, accordingly, be passed in his favour.

3. Claim was resisted by the management pleading that Shri Ranvir Singh was appointed as muster roll beldar in July 1982. He was regularised on the post of beldar on Work Charge Establishment with effect from 16-12-1993. In June 1999, he was asked to note down complaints of allottees at the Enquiry Office, which job was performed by him voluntarily as he wanted to avoid physical hard labour at work site. Noting down of the complaints was done by him in addition to his duties as beldar. The said work was performed by him till 19-07-2002. For the period he noted down complaints of allottees, he was paid higher rates of wages. Though his wages were fixed in the pay scale of Rs. 3030.00-Rs 4590.00 with effect from 03-06-1999, yet his designation was not changed. It was mentioned in the order dated 21-02-2001, on the strength of which his pay was fixed as aforesaid, that beldar will be entitled to get all benefits as compared to Group D categories. Revision of their wages would not make them workers of regular establishment. The above order was withdrawn with effect from 20-07-2002, vide office order no. 19(1)/EC 11/517 dated 23-07-2002 passed in pursuance of order dated 18-07-2002 pronounced by Central Administration Tribunal (in short the CAT), New Delhi, in O.A. No. 3095/2001. The claimant was directed to work as beldar with effect from 20-07-2002 and replaced in pay scale of Rs. 2550-3200, vide order referred above. In view of these facts, claim put forward in unfounded, pleads the

management.

4. Management presents that arbitration award dated 31-01-1988 was modified by High Court of Delhi vide judgements dated 28-01-1992 and 25-09-1998. In Pursuance of the arbiration award, as modified by High Court of Delhi, work charge beldars, on roll of the management on 01-04-1981 and thereafter, whose services were utilised for noting down complaints etc. in the enquriy office were to be paid difference of wages for the period they noted down complaints etc. of the allottees. Only the workcharge beldars, who were called upon to note down complaints etc. of the allottees, are entitled to get actual difference of wages for the period they performed the above duties. Since the claimant was not a work charge beldar on 01-04-1981, the arbitration award is not applicable to him.

5. There is no recognized category of post of enquiry clerk. As per policy of the management, only regular clerk recruited through Staff Selection Commission are to be assigned duties of clerical in nature. Post of clerk is Group 'C' post, against which recruitment is to be made by Staff Selection Commission as per relevant recruitment rules. No appointment can be made on such posts contrary to recruitment rules, made under Article 309 of the Constitution of India. Category of beldar is not a feeder category for promotion to the post of clerk.

6. Claimant filed O.A. No. 3095/2001 before the CAT, which was dismissed vide order dated 10-07-2002. Another O.A, No, 1989/2002 was preferred, which was dismissed vide order dated 31-01-2002. In pursuance of the said decision of the CAT, order No. 10(2)LHD/EC-11/710 dated 29-09-2002 was issued. O.A. No. 2623 of 2002 was dismissed by the CAT vide its order dated 14-11-2002. In view of these facts, present proceedings, initiated by the claimant is an abuse of the process of law. Management issued office memorandum dated 11-05-2001 instructing all concerned not to assign job of higher category to a lower category worker in future under any circumstances. In view of these facts, neither the claimant is entitled for seniority for the post of enquiry clerk nor is he entitled for difference of pay as claimed by him. His claim deserves dismissal, being devoid of merits.

7. Vide order No.Z-22019/6/2007-IR(C II), New Delhi dated 30-03-2011, the appropriate Government transferred the dispute to this Tribunal for adjudication, while using its powers under Section 33B of the Industrial Disputes Act, 1947 (in short the Act).

8. The claimant has examined himself in support of his claim. Shri Panna Lal Singh Chauhan, Executive Engineer, entered the witness box. No other witness was examined by either of the parties.

9. Parties were called upon to advance arguments over the matter. The claimant filed his written arguments. Shri Ram Lal, Office Superintendent, L Division, CPWD presented facts on behalf of the management. Shri Rajiv Aggarwal, Advocate, who was present before the Tribunal, came for assistance of the claimant. He raised legal submissions in the matter. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

10. In his affidavit Ex. WW1/A tendered as evidence, the claimant swears that he was appointed as beldar in July 1982 and assigned duties of enquiry clerk. He worked as enquiry clerk since July 1982 till June 1999, the date when he was absorbed on that post. He was regularized in the grade of enquiry clerk with effect form 03-06-1999. He worked in that capacity upto 20-12-2002. He was paid wages for the post of beldar from July 1982 till 03-06-1999, for which he is entitled to difference of pay of enquiry clerk with that of the pay of a beldar. He also worked as enquiry clerk from 20-07-2002 till 20-12-2002, but was paid wages of beldar.

11. Shri Panna Lal Singh Chauhan swears in his affidavit Ex.MW1/A that the claimant was appointed as beldar on muster roll in July 1982 and his services were regularised on the post of beldar on Work Charge Establishment on 16-12-1993. From July 1982 to 02 06-1999, he did not perform duties of enquiry clerk. When he performed duties of enquiry clerk, he was granted higher pay vide office order no. 10(12)LHD/ECII/2001 dated 21-03-2001. However, his designation was not changed. Vide letter no. 10(1)/2002/AE/IV/262 dated 19-07-2002, instructions were issued not to award work of enquiry clerk to beldar with effect from 20-07-2002. Thereafter, work of enquiry clerk was not taken from the claimant. During the course of cross-examination, he concedes that the claimant performed duties of enquiry clerk from 03-06-1999 to 19-07-2002. Thereafter, he was asked to perform duties of beldar only.

12. When facts unfolded by the claimant, Shri Chauhan and those projected by the documents proved in the case are appreciated, it emerged over the record that the claimant was engaged as beldar on muster rolls in July 1982. He was regularised as beldar on Work Charge Establishment on 16-12-1993. This proposition was not dispelled by the claimant when Shri Chauhan faced rigours of cross-examination. It is crystal clear that till 16-12-1993, claimant was working as muster roll beldar. Ex. WW1/15 is a letter written by Shri A.R. Sidiqui, Assistant Engineer-IV, to Superintending Engineer, wherein he mentions that the claimant worked as enquiry clerk from 1982 to 1986 and subsequently from June 1999 till 20-8-2000, the date when the letter was written. Ex. WW1/16 was written by Shri A.K. Aggarwal, Executive Engineer (Retd.), to the Executive Engineer (Civil), RML Hospital Division, where he mentions that from June 1986 to September 1991, claimant was entrusted with the watch

and ward duties from 2 p.m.to 10 p.m. at Sub Division I, Aram Bagh Construction Division No.13, CPWD, New Delhi. There had been serious and regular water problem in that area and telephones were received from residents till late night. Shri Ranvir Singh had also been attending to telephone calls and noting down complaints after 5 p.m. His services were utilised as such till an enquiry clerk joined the Sub Division in July 1986 and thereafter on occasions when enquiry clerk used to be on leave. These documents,which were not disputed by the management, bring it over the record that from 1982 till July 1986, the claimant performed duties of enquiry clerk.

13. Ex. WW1/2 highlights that arbitration award dated 31-01-1988 concludes that work charge beldars, who were required to perform duties of higher post, shall be paid wages of that higher post. Arbitration award was modified by High Court of Delhi in judgements dated 29-01-1992 and 25-09-1998 wherein it was pronounced that such work charge beldars, on the rolls prior to 01-04-1981 and thereafter, whose services were utilised for noting down complaints in the enquiry office are to be paid difference of wages for the period they noted down complaints of the allottees. As pointed out above, from July 1982 till 16-12-1993, claimant was working as muster roll beldar. He was not a work charge employee. Consequently, his case does not come within the purview of the arbitration award dated 31-01-1988, modified by High Court of Delhi, to claim wages of enquiry clerk from July 1982 to July 1986.

14. Claimant was regularised as beldar on Work Charge Establishment with effect from 16-12-1993. As per facts unfolded by Shri Chauhan, work of enquiry clerk was taken from the claimant from 03-06-1999 to 19-04-2002. No evidence was adduced on behalf of the claimant, except ocular facts to establish that he was working as enquiry clerk after July 1986 upto 02-06-1999. Ocular facts unfolded by the claimant does not find any corroboration from other piece of evidence, direct or circumstantial. Self serving words were disputed by Shri Chauhan when he entered the witness box. Shri Chauhan unfolded in clear and unambiguous words that the claimant performed duties of enquiry clerk from 04-06-1999 to 19-07-2002. It is also projected by the management that for that period claimant was paid wages of enquiry clerk. Office order no.10/12/ LHD/EC II/2002 dated 21-05-2001 has been proved as Ex. WW1/7 by the claimant. When perused, it came to light that Ex. WW1/7 projects that the claimant was working as enquiry clerk with effect from 03-06-1999 and his pay was fixed in the scale of Rs-3050-Rs.4590.00. From these documents, it has been brought over the record that the claimant worked as enquiry clerk with effect from 03-06-1999 after being regularised on the post of beldar in Work Charge Establishment. Order, Ex. MW1/12 was issued on 19-07-2002 by the Assistant Engineer IV, Dr. RML Hospital Division, Aram Bagh Service Centre, New Delhi, on the strength of which claimant was commanded to work as beldar with effect from 20-07-2002. It stands emerged over the record that from 03-06-1999 to 19-07-2002, work of enquiry clerk was taken by the management from the claimant. It is not disputed by the claimant that for that period, he was paid wages of enquiry clerk.

15. Claimant agitates that from July 1982 to July 1986, work of enquiry clerk was taken and pay of beldar was given. According to him, management cannot pay wages of beldar to him on the principles of equal pay for equal work. For an answer to this proposition, the Tribunal is required to take note of the constitutional rights available to the claimant. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions(c) termination of employment and (d) matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

16. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

17. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving

real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time. Therefore classification based on nature of business for which sweepers were employed by the management, has a reasonable differentia.

18. Now it would be considered as to whether the claimant is entitled for wages for the post of enquiry clerk, on which he worked from July 1982 to July 1986. Doctrine of "equal pay for equal work" has been enshrined under Article 39(d) of the Constitution as one of the directive principles of the State policy, requiring the State to secure "equal pay for equal work" for both, men and women. This constitutional goal is capable of attainment through constitutional remedies by way of enforcement of constitutional rights, declares the Supreme Court in Randhir Singh [1982 (1) LLJ 344]. In G. Sreenivasa Rao [1989(2) LLJ 149], the Apex Court announced that right to "equal pay for equal work" is an accompaniment of the equality clause enshrined in Articles 14 and 16 of the Constitution of India. Nevertheless, abstract doctrine of "equal pay for equal work" cannot be read in Article 14. Reasonable classification, based on intelligible criteria having nexus with the object sought to be achieved, is permissible.

19. In Grih Kalyan Kendra Workers Union [1991(1) LLJ 349] Apex Court had gone to the extent of saying that "equal pay for equal work" has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. It was pronounced therein that it has ceased to be a judge made law as it is the part of the constitutional philosophy which ensures a welfare socialistic pattern of State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. The principles does not apply to the State only but also applies to the State instrumentalities.

20. In 1976, Equal Remuneration Act, 1976 was enacted to implement provisions of Article 39(d) of the Constitution. Construing provisions of that Act, Supreme Court in Audrey D'Costa [(1987(1) LLJ 536)] pronounced that the Act does not permit the management to pay to a section of its employees, doing the same work or work similar in nature, lower pay contrary to the provisions of section 4(1) of the Act only because it is not able to pay equal remuneration to all. The Court further observed that the applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it.

21. In deciding whether the work is the same or is broadly the same, the Authority should take a broad view and also adopt a broad approach in ascertaining whether any differences are of practical importance because from the subject of similar work' implies difference in detail. Actual duties performed should be looked into and not those that are theoretically possible. Elaborating the concept of "equal pay for equal work" and its application, the Apex Court in Randhir Singh (Supra) observes as follows:—

> "Where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same *** and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade, The higher qualification for higher grade. which may be either academic qualification or experience based on length of service, reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of "equal pay for equal work" would be an abstract doctrine not attracting Article 14 if sought to be applied to them."

22. In Delhi Veterinary Association (AIR 1984 SC 1221), the Supreme Court ruled that apart from the nature of work, the pay structure should reflect many other values and observed that the employer should follow certain basic principles in fixing the pay scales of various posts and cadres in the Government service. The degree of skill, strain of work, experience involved, training required, responsibility undertaken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved a. .. according to the Third Pay Commission, some of the relevant factors which should be taken into consideration in fixing pay scales. The method of recruitment, the level at which the initial recruitment is made in the hierarchy of service or cadre, minimum educational and technical qualifications prescribed for the post, the nature of dealings with the public, avenues of promotion available and horizontal and vertical relativity with other jobs in the same service or outside are also relevant factors, announced the Court.

23. In JP Chaurasia [1989 (1) LLJ 309], the Apex Court,

elaborating the same theme, ruled that apart from the nature of work or volume of the work done the other relevant factors to be taken into account, are 'evaluation of duties and responsibilities of the respective posts'. In Hari Narain Bhowal [1995 (II) LLJ 328], the Apex Court pronounced that the principle of "equal pay for equal work" can be enforced when claiming persons satisfy the Court that not only the nature of work is identical but in all other respects they belong to the same class and there is no apparent reason to treat "equals as unequals".

24. In Ram Ashray Yadav [1996 (II) LLJ 92], the Apex Court observed that principle of "equal pay for equal work" will not apply where qualification prescribed, mode of recruitment and the nature of duties are different for regular employees and a temporary employee. The claim of temporary Investigator cum Computer for payment of salary at par with the regular Investigator cum Computer was discarded by the Court in the said case. However classification of officers into two groups, namely, deputations and non-deputations, for paying different rates of special pay was held to be not permissible under Articles 14 and 16 of the Constitution, as it did not bear any rational relation to the objects of the classification. See M.P. Singh (AIR. 1987 S.C. 485).

25. In Jasmer Singh, [1996(11) SCC 77], the Apex Court made it clear that equal pay can be given for equal work of equal value. How work of two employees can be assessed to be of equal value was laid down by the Apex Court as follows:

> "It is, therefore, claimed that quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay-scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay-scale must be left to expert bodies and, unless there are any malafides, its evaluation should be accepted".

26. In case nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, principle of equal pay for equal work cannot apply, as held by the Apex Court in Tarun K. Roy [2004 (1) SCC 347]. Whether the claimant can project his case for grant of pay for the post of enquiry clerk on the ground that he performed equal work as performed by the enquiry clerk/clerks? Answer lies in the negative. At the cost of repetition, it is said that the work performed by the claimant and clerks, recruited by the management, had no nexus of equality. The Apex Court in Surender Singh [2007 (115) FLR 1003] had reviewed the law and laid that for grant of equal pay for equal work, it has to be shown that there is total and complete identity between two persons and only thereafter they can be granted equal pay for equal work. The law laid is reproduced thus:

> "Principles of equal pay for equal work has undergone a sea change. Earlier view of this Court was that if two persons are discharging the same functions, they will be entitled to same wages. Subsequently, that view has been changed and now the view of this Court is that there should be complete and total identity between two persons, similarly situated so as to grant equal pay for equal work. Recently, this Court has held that identity between two persons is to be complete and total. In case of regular appointee, he has undertaken selection process and his services are regular. Even if a daily wager employee who is discharging the same function as a regular employee, the authorities are not bound to grant equal pay to such a person who is appointed on daily wage basis, i.e. he is appointed for a short term and has not faced the selection process. Thus the principle of equal pay for equal work is to be granted only if there is total complete identity between the two persons. In this view, we are supported by decision of this Court in the case of Shri S.C. Chandra and others vs. State of Jharkhand and others (2007 (9) SCR 130), which is referred to in earlier decision of this Court."

27. In Surjit Singh [2009(123) FLR 38] Apex Court was confronted with the proposition as to whether the persons employed as daily wagers in different capacities by Public Health Department of State of Punjab were entitled for "equal pay for equal work" to that of the employees who were appointed against regular posts, by following process of recruitment. It was ruled therein that grant of benefit of doctrine of "equal pay for equal work" depends upon a large number of factors, including equal work, equal value, source and manner of appointment, equal identify of group and wholesale or complete identity with the employee with whom equality is claimed. The same threads of thoughts were there in Ramesh Chandra Bajpai [2009(123) FLR 525] wherein the Apex Court ruled that similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. It was emphasized that the Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality,

functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts.

28. Relying on the above law, it would be considered as to whether there is complete and wholesale identity between the claimant and a clerk recruited by the management, following recruitment rules. Answer lies in negative. The claimant was engaged as beldar on muster role. He was subsequently taken as work charge employee with effect from 16-12-1993. Job of enquiry clerk was taken from him from July 1982 to July 1986, in the first spell for which he is claiming pay equal to that of a clerk. In case the claimant makes any lapse in performing the job of an enquiry clerk, authorities cannot hold him accountable since he is not a holder of that post. The claimant is immune from rigours of disciplinary action and responsibility. On the other hand, his engagement was on the post of beldar. Thus, it is evident that the claimant does not have any identity, not to talk of wholesale identity with that of a clerk, who has been recruited following recruitment process. Responsibilities assigned to the claimant cannot be said to be of equal value to that of the holder of the post of clerk on permanent basis. Mere factor that the work of enquiry clerk was taken from the claimant would not put him at par with a clerk, appointed following proper recruitment process. Educational qualification, experience, method of recruitment and promotion to different categories of posts of clerk no-where tallies with the factors applicable to the claimant. Hence, it cannot be said that the claimant is in complete and wholesale identity with a clerk, regularly appointed by the management. In such a situation the claimant cannot invoke the doctrine of "equal pay for equal work". The management has not committed any illegality when wages of a clerk, appointed by following recruitment rules, are not paid to the claimant.

29. There is other facet of the coin. The claimant preferred OA No.3095/2001 before the CAT wherein he claimed that withdrawal of pay granted to him for the post of enquiry clerk on the strength of order Ex. MW1/13 was wrong. He sought intervention of the CAT for quashing the said order. The CAT ruled that since management had taken a policy decision not to regularise work charge beldars to Group C post, order of re-fixation of pay was found to be justified. The CAT dismissed the application of the claimant vide its orders dated 10-07-2002.

30. Question for consideration comes as to whether the said order operates as res-judicata ? For an answer to the proposition law relating to the doctrine of res-judicata is to be considered. Law contained in section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of resjudicata or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent Court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of res-judicata has been explained in the simplest possible manner by Das Gupta J. in the case of Statyadhyan Chosal (AIR 1960 S.C. 941) in the following words:

> "The principle of res-judicata is based on the need of giving a finality to judicial decision. What it says is that once a res- judicata it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to convass the matter again".

31. It is not every matter decided in a former suit that will operate as res-judicata in a subsequent suit. To constitute a matter as res-judicata under Section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former .
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

32. Section 11 of the Code bars trial of any suit as well as an issue which had been decided in a former suit. Issues are of three kinds: (i) Issue of fact; (ii) Issue of law; and (iii) Mixed issues of law and fact. A decision on an issue of fact, however erroneous it may be, constitutes res- judicata between the parties to the previous suit and cannot be reagitated in collateral proceedings. Law to this effect was laid in Mathura Prashad [1970 (1) SCC 613]. A mixed issue of law and fact also, for the same reasons, operates as res-judicata.

33. To invoke plea of res-judicata it should be shown that the court which decided the former suit must have

been a court competent to try the subsequent suit. Thus, the decision in a previous suit by a court, not competent to try the subsequent suit, will not operate as re- judicata. The expression "competent to try" means "competent to try the subsequent suit if brought at the time the first suit was brought". In other words, the relevant point of time for deciding the question of competence of the court is the date when the former suit was brought and not the date when the subsequent suit was filed. In order that a decision in a former suit may operate as res-judicata, the court which decided that suit must have been either-(a) a court of exclusive jurisdiction, or (b) a court of limited jurisdiction; or (c) a court of concurrent jurisdiction.

In industrial jurisdiction principles analogus to res-judicata are applicable.

34. Now it would be considered as to whether the CAT was seized of the issue which is raised before this Tribunal. As detailed above, the CAT was seized of the issue, relating to withdrawal of pay, granted to the claimant for the post of enquiry clerk, vide order Ex. WW1/13. The CAT ruled that the management had taken a policy decision not to regularize work charge beldars to Group C post and found the order of refixation of pay of the claimant for the post of beldar to be justified. Question for consideration comes as to whether the said order would operate as res-judicata? For an answer the Tribunal has to look into the provisions enacted in Explanation IV of section 11 of the Code. The rule of constructive res- judicata, embodied in explanation IV is part of the general principles of law of res-judicata and one cannot say that any innovation has been introduced in the law by enacting the said explanation. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate preview of the original action both in respect the matters of claim or defence. The principle underlying the said explanation is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. Therefore, the issue which might and ought to have been raised in the previous litigation would be barred by constructive res-judicata in the subsequent limitation. Where a matter was constructively in issue in the previous suit it can be said to have been deemed to be heard and decided.

35. Here in the case issue of withdrawal of pay for the post of enquiry clerk was actually in issue before the CAT. It was heard and decided against the claimant. The CAT ruled that order Ex. WW1/13 refixing pay of the claimant for the post of beldar was justified. The CAT is competent to hear the issue raised in the present controversy. In these situation, it emerge over the record that the issue which the claimant wants to raise before this Tribunal was raised by him before the CAT and it was decided against him. Consequently it is concluded that order Ex. WW1/13 operates as res-judicata and bars the claimant to re agitate the issue of non payment of pay for the post of enquiry clerk to him.

36. For consideration of aspects of social justice, the Tribunal has to keep in mind that the Act is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by brining harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our Constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLJ 366].

37. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out. Reference can be made to precedent in Rashtriya Mill Mazdoor Sangh [1960 (II) LLJ 263] In J.K. Cotton Spinning & Weaving Mills Company Ltd. [1963 (II) LLJ 435] the Apex Court ruled that industrial disputes are to be adjudicated laced with the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted thus:

> "In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasised the relevance, validity and significance of doctrine of social justice..... Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities".

38. In Ahmedabad Manufacturing and Calico Printing Company Ltd. [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the industrial adjudication

cannot and should not ignore the claims of social justice. Same views were expressed in Basti Sagar Mills Company Ltd. [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

39. As emerge out of Ex. WW1/16, duties of watch and ward staff were taken from the claimant from 2 p.m. to 10 p.m.. Since there were complaints from allotees of flats in Aram Bagh area, claimant used to attend to telephone calls and note complaints of the allotees after 5 p.m. Thus, it is emerging over record that as watch and ward staff, claimant used to perform his duties till 10 p.m. After office hours, he used to hear the telephone calls and note down complaints of allotees in respect of irregular water supply. These facts highlight that work of enquiry clerk was performed by someone else upto 5 p.m. Thereafter, the claimant used to note complaints of allotees as and when such complaints were made by them telephonically. The claimant heard those telephone calls while performing his duties as watch and ward staff. On the other hand, he was working as must roll beldar, who was yet to be regularized in that capacity. Whether these facts would justify grant of equal pay to that of clerk on social justice consideration? I am of the view that social justice considerations are to be kept in view alongwith other attending considerations. In case such an order is passed in the present controversy, on social justice considerations, it would amount to violation of law laid down by the Apex Court. Social justice considerations cannot override the pronouncements handed down by the Apex Court, which are law of the land. Consequently, I am of the view that social justice consideration cannot run counter to established legal propositions. Therefore, I find that the claimant has no case on that proposition too. His claim has no merits. Same is, accordingly, dismissed. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated : 24-08-2012

CORRIGENDUM

New Delhi, the 7th September, 2012

S.O. 3043.—The name of the Central Govt. Indus. Tribunal-cum-Labour Court mentioned in the third line of the notification of even number dated 18-11-2010 may be read as Hyderbad instead of Nagpur.

[No. L-22012/270/2005-IR (C-II)]
B. M. PATNAIK, Section Officer

नई दिल्ली, 13 सितम्बर, 2012

का.आ. 3044.—केन्द्रीय सरकार संतुष्ट हो, जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ढ) के उप-खंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का.आ. दिनांक 26-3-2012 द्वारा हिन्दुस्तान एरोनाटिक्स लिमिटेड जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 8 में शामिल है, की उक्त अधिनियम के प्रयोजनों के लिए दिनांक 26-3-2012 में छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था:

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की ओर कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (ढ) के उप-खंड (vi) के परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 26-09-2012 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है ।

[सं. एस-11017/1/2003-आई.आर.(पी.एल.)]

चन्द्र प्रकाश, संयुक्त सचिव

New Delhi, the 13th September, 2012

S.O. 3044.—Whereas the Central Government having been satisfied that the public interest so requires that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour & Employment dated 26-3-2012 the service in Hindustan Aeronautics Limited which is covered by item 8 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 26th March 2012.

And whereas, the Central Govt. is of opinion that public interest requires the extensions of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 26th September 2012.

[No. S-11017/1/2003-IR (PL)]
CHANDRA PRAKASH, Jt. Secy.

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